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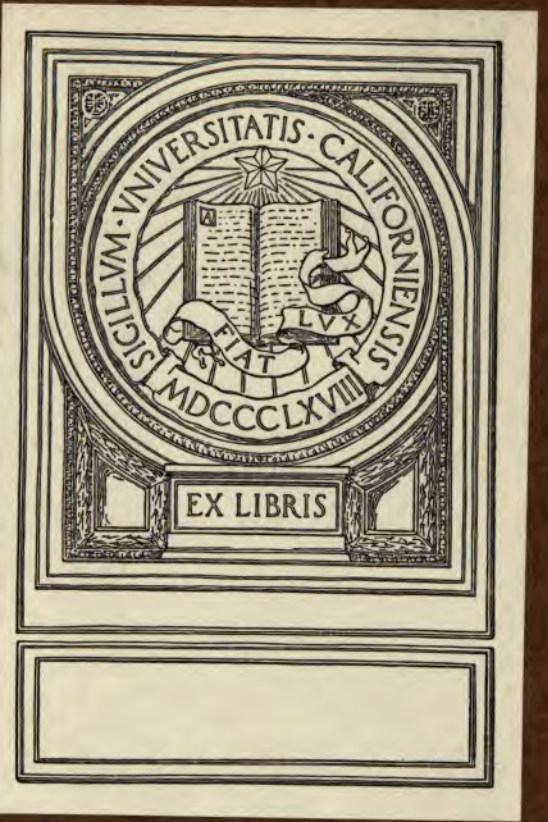
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Undesirable Results of German Social Legislation

BY

LUDWIG BERNHARD

PROFESSOR OF POLITICAL ECONOMY

AT THE

University of Berlin

JULIUS SPRINGER, BERLIN, 1915

Translated by

HAROLD G. VILLARD

Workmen's Compensation Publicity Bureau

50 Maiden Lane, New York

1916

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INTRODUCTION.

In the literature of all countries, this question always returns: How far may the freedom of movement of the individual, his spirit of enterprise, his independence and sense of personal responsibility, how far may and should these sacred powers be restricted out of a proper regard for the interests of the whole body of the people?

The philosopher, the politician, the clergyman and the technical man, all these are thinking of and discussing this question. But no one has determined with absolute certainty the point at which legislation in the interests of society as a whole should stop. Nor will anyone ever be in a position to do this, inasmuch as every period has its own peculiar requirements. For history reveals to us a changing struggle between the individual and society in an organized form; the individual contending first with the city commonwealth, then with the guild, again with the four estates and lastly with the socialistic community.

We realize that this contest between individualistic and socialistic ideals has been an impelling force in the history of the world, perhaps the greatest impelling force. We recognize the highly beneficial effect of the guilds during the period in which they arose and throve, of this ironclad form of organization, to which the former glory of German cities was due. But we also know that later, when it was necessary to bring about a new arrangement, men of strong personality burst the fetters of the guild system, and that those countries made the fastest progress in which the individual struck out most freely and boldly into untrodden paths.

Thus does history inform us of changes which at all stages were both welcomed and execrated. Every time such a change took place a flood of literature arose dealing with the old question: Where is the line to be drawn between the rights of the individual and the rights of society considered as a whole? And each time the writers finally had to admit that they knew of no answer.

Today again we are encompassed with a mass of literary outpourings in all civilized tongues, which ask the question, Where is the line to be drawn? After the old writers have had their say and have learnedly stated that "on the one hand" one ought not to destroy the spirit of initiative in the individual and that "on the other hand" one should exercise social justice, the younger writers come forward equipped with more polished phrases and with finer shades of meaning but say identically the same thing.

Therefore, baffled by the hopeless outlook presented by this everlasting repetition of the same conclusions, I repaired to the factories and propounded to myself this sober question: Are there conditions in our modern industrial life which clearly show that the personal sense of responsibility and the needful freedom of movement is injuriously restricted out of social considerations? Are there concrete cases the facts of which, described in detail, will give us an insight as to where to draw the line of demarcation which should be observed today?

PART FIRST.

GOVERNMENTAL REGULATION AND PRIVATE HELPLESSNESS.

CHAPTER I.

GOVERNMENTAL AUTHORIZATION OF PRIVATE INDUSTRIAL ENTERPRISES.

Whoever has followed the controversy in regard to the granting of concessions (a) might almost conclude that short-sighted heads of industry and a pettifogging bureaucracy were lined up in opposition to each other to the great detriment of the nation. It is not easy to pick one's way through the mass of requests and decisions, of debates and resolutions, of memorials and reports of proceedings, and it is still more difficult to determine thereafter who is really the "guilty party."

On the one hand, we are informed that the bureaucratic interpretation of the rules for the granting of concessions "operates as a severe restriction on industry. It makes more difficult the installation and starting up of industrial undertakings and entails heavy costs."(1)

We learn further that in the procedure for obtaining concessions there is widespread "a perfect mania for regulating and paragraphing everything" whereby "the limits of official powers are often exceeded."(2)

"The methods of the officials in charge of concessions," it is asserted, "present a picture which could hardly have been more variegated even under the regime of the old government police system. The procedure for securing concessions has become so long-winded that frequently it is impossible to take advantage of favoring circumstances in proper season."(3)

The assertion is made that "in many cases an industry in a foreign country will have long made use of a new invention be-

(1) Cf. the circular address on Sept. 7, 1909, to the members of the Deutscher Handelstag by their President (printed in "Handel und Gewerbe" of Sept. 25, 1909).

(2) Report concerning the Result of an All Around Inquiry Addressed to the German Blast-Furnaces (printed in "Stahl und Eisen," 1909, No. 19).

(3) From an address dated June 10, 1910, of the Zentralverband Deutscher Industrieller to the Prussian Minister of Commerce.

(a) Translator's Note. In Germany no industrial establishment may be initiated without first securing a "concession" or, as we would call it a "license."

fore a German industrial employer will have even received the official permission to put the invention to profitable use in his own establishment."(1)

Similar complaints are to be found in almost all branches of industry, and they often contain the most bitter accusations against the officials.(2)

If, in order to form an impartial opinion on the subject, we should next ask the authorities for their answer, we would be told that in the opinion of the officials a great part of the blame is to be ascribed to the industrial owners themselves. The result of the investigations of the Prussian appeal court showed that the officials had acted improperly in only very rare instances. On the other hand, the cases have been very frequent in which the industrial heads had made insufficient explanations and had complicated the procedure by improper proposals. An extraordinary ignorance of the law and of the method of procedure prevailed among the industrial owners in consequence of which much time was lost in calling for necessary counter-explanations.(3)

Thus do both sides accuse each other, and one might almost come to the conclusion that all shortcomings would disappear if both parties would improve their methods. But conditions are much more complicated in reality; for the officials and industrial owners have long been endeavoring to improve matters as far

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(1) Vossen—Das Recht der konzessionierten gewerblichen Anlagen Hannover, 1911, p. 34.

(2) The following organizations have expressed themselves on this point either alone or in conjunction with others: Der Verein zur Wahrung der Interessen der chemischen Industrie Deutschlands, which precedes all others in the effort to obtain a simplification of the rules for securing industrial concessions and which already discussed the question at its general meeting in Kiel in 1895; further the Verein fur Ton, Zement und Kalkindustrie, which has been engaged for years in submitting propositions looking to a simplification of procedure; in addition, the Verein Deutscher Portland Zementfabriken, Verband Deutscher Tonindustrieller, Verein der Kalksandsteinfabrikanten, Verein Deutscher Marmorwerke, Bergische Fabrikanten Verein, Fabrikantenverein Hannover, Oberschlesische berg und huttenmannische Verein, Verein Deutscher Zellstoff fabrikanten, Verein Deutscher Motorfahrzeng-Industrieller; and others.

(3) On November 23, 1910, a conference took place in the Prussian Ministry for Commerce and Industry, at which the higher officials were represented by the Under Secretary and several privy councilors, and German industry by several heads of large industrial establishments and by the general secretaries of various industrial organizations. At this meeting the complaints of German industry concerning the procedure in matters of concessions were carefully discussed and two reports have been issued in regard thereto. The shorter one of the two bears simply the signature of the Under Secretary, while the other is signed by a representative of the industrial owners. Both reports, which are not intended for publication, were before me at the time this pamphlet was written. In addition, the officials have expressed themselves concerning this question quite a number of times in periodicals, especially Gewerbe Assessor Dr. Tittler, in the periodical Sozialtechnik for 1911, Nos. 8 and 9.

as lay in their power and yet all their efforts appear to have been of little effect.

In vain does the official notice of May 1st, 1904, direct that requests for authorization of industrial undertakings "are to be treated as rush matters and are to be designated as such in the ordinary course of business," and in vain did the Prussian Minister of Commerce, on July 19th, 1911, issue on order which proved beyond all doubt that he is thoroughly disposed to hasten and to simplify the procedure for obtaining concessions.(1)

The industrial owners too are doing everything that lies in their power. Connected with the unions formed for the purpose of promoting the interests of our leading industries, central bureaus are to be found, which as "law committees" or as "committees for concessions" give advice to the industrial heads, draw up and revise requests for concessions, and thus endeavor to smooth the way for the speedier dispatch of applications for concessions.

And yet, as daily experience proves, despite all this, the good intentions of the officials and industrial owners are by themselves insufficient. No one doubts, indeed, that the accelerating directions of the leading officials and the efforts of the industrial unions are of help. Yet everyone who is at all familiar with the practice in vogue, knows that the kernel of the question is not to be reached through such directions and efforts, for the causes of the existing great shortcomings lie far deeper.

In order to understand this fully, it should be remembered that the regulations concerning the authorization of industrial enterprises are based on the conception of "industrial freedom," which was laboriously attained after a fifty-year struggle. According to this idea, enterprises which might be a source of danger or objectionable to the general public have to be officially authorized. With the granting of a concession, however, they are protected against the imposition of supplementary burdens and protected against excessive police regulations. The struggle centred about this question; and, in an exposé of the reasons for an industrial code, it was expressly stated that the legislator was especially anxious to replace the police regulations, which "are often so multiform and so vexatious," by a new series of rules, and to guard those engaged in industry against "supplementary requirements and restrictions."

(1) The order of July 19, 1911, which is devoted to a detailed discussion of the complaints of German industry, begins with these words: "The complaints which have long been made in industrial circles regarding the manner in which the procedure for the authorization of industrial undertakings is conducted as prescribed in §16 ff. of the Gewerbeordnung, have decided me to discuss hereafter verbally with representatives of the industries affected all questions which have given cause for grievance. If these verbal discussions have not resulted in any changes thus far being suggested in the provisions of the law, nevertheless it appears to me very desirable that one should work with the greatest possible energy in official channels for the abolition of disadvantageous methods of procedure."

On the surface, these concession-rights—secured in the struggle for industrial freedom—are still in existence today.(1) In reality, however, the simplified and abbreviated procedure has gradually become confused and distorted, and official technical difficulties have been created—I would almost say artificially—which cannot be done away with by mere ministerial decree.

These changes in procedure, which are severely felt especially in a period of industrial development and of international competition, date their origin to the enactment of the provisions calling for the protection of the workingmen.

For with the object of energetically developing schemes of social betterment, a triple division of authority has been devised, which, thanks to the unexampled stupidity displayed by those in charge, has impeded in a marked degree the procedure for obtaining concessions.

How has this come to pass? According to law a concession can be granted only when all provisions intended for the workers' protection shall have been complied with. But this method of development was not deemed sufficient, and the following regulation was inserted in the industrial code by the supplementary law of June 1st, 1891.

"The proper police authorities are empowered to compel—through directions for individual enterprises—the carrying out of such measures as may appear desirable and in the interest of workmen's protection, feasible of execution."(2)

In addition, the Imperial Insurance Code provides that "the employers' associations are obligated to promulgate the necessary rules concerning the contrivances and regulations which the members have to adopt for the purpose of avoiding accidents in their establishments."(3)

Concession officials—Police officials.(4)—Employers' association.

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(1) §16 ff. of the Gewerbeordnung.

(2) §120 d of the Gewerbeordnung.

(3) This provision of §848 of the Imperial Insurance Code was already contained in the accident insurance law of July 6, 1884 (§78) and in the industrial insurance law of June 30, 1900 (§112): "The associations are empowered and can be compelled through a system of inspection to issue directions—1. Concerning the measures and rules to be adopted by members in their establishments for the purpose of avoiding accidents under risk of incurring in case of violation, either a money penalty of 1,000 marks or of having their establishments transferred into a higher risk class or, in case they are already in the highest risk class, of having the amount of their premiums doubled."

(4) In Prussia, the officials in charge of concessions are either the circuit or the city council and, in the case of a city situated in a country circuit and having more than 10,000 inhabitants, the mayor and alderman (collegial community board). In certain cases, the district council acts. These officials are authorized to hold investigations right on the spot, to cite witnesses and experts and to examine them under oath, in short, to pursue all necessary investigations to the fullest extent. More particularly, these authorities ask for reports from a building department official, also

The legislator himself foresaw that this triple division of authority would lead to confusion;(1) but experience alone has shown how detrimental this "triple assurance of having the workingman safeguarded" has in reality proven to be.

To make several bodies responsible for one and the same matter is contrary to one of the elementary principles of correct administration. Not only do the regulations thereby lose in unity, but disputes as to jurisdiction arise, which delay proceedings and entail all the evil consequences of "too much governmental red tape." How the safeguarding of the worker suffers thereby can be easily seen. While the concession-granting body is engaged in inserting in the terms of the concession far reaching measures for the workers' protection, the activities of the employers' association are shoved in the background. At the same time, the employers' associations are accused of "not issuing sufficiently complete directions for the prevention of accidents."(2). The response thereto is a misplaced competition between the official bodies, a bureaucratic race, as a result of which superfluous directions are issued, such as, for example: "Drivers of vehicles are not allowed to fall asleep while en route." "In going down hill, brakes are to be properly applied." "The use of unsafe ladders is forbidden." "Workmen who have to use a hand or fore-hammer must assure themselves before striking a blow, that no one is standing behind them, whom they can hit."

Quite rightly has one of the most experienced exponents of accident prevention exclaimed:(3) "If we wish to be honest, we must admit that we carry around with us, in the form of these rules, an amount of ballast which we would do better to discard today than tomorrow. We ought to cease being proud of this humbuggery and of possessing a set of shadowy paper paragraphs which would minutely regulate every movement and would turn each individual into a puppet; all these are of per-

(1) —when it was enacted: "If the regulations (of the police) should be contrary to the directions issued by the appropriate employers' association for the prevention of accidents, the executive committee of the association is authorized to start the necessary legal remedies."

(2) Proceedings in the Prussian Ministry of Commerce (November 23, 1910).

(3) Heretical Ideas as to Accident Prevention, by Karl Klein, manager and technical inspector of Section I of the Machinery Employers' Association in the Zeitschrift für Gewerbehygiene, for 1909. No. 6.

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from a factory inspector and, as a rule, also from a health department official. Finally, in certain cases the proper veterinary official must be called upon as one of the reporting experts.

If taken within 14 days, an appeal is permissible from the decision of the concession-granting board. The Minister of Commerce decides as to these appeals: "The Minister of Agriculture must be consulted in addition, if the erection of a dam is contemplated, affecting in any way agricultural interests."

In Bavaria, the district authorities act; and, in Saxony, the high district constabulary and the municipal council, etc.

nicious import and ought to disappear. For the increasing mania for regulating everything makes the workman so dependent that he regards as permissible all that is not directly forbidden."

As far as the protection of the worker is concerned, how much better would it be if a single body assumed the entire responsibility. Then at a critical stage it could not be said: The employers' association is a fault in this matter! No, the police authorities! No, the concession-granting officials! Further, there should be done away with the many superfluous directions which make it so difficult for the workingmen thoroughly to familiarize themselves with the really necessary regulations. As a matter of fact the safeguarding of the worker is but little enhanced by this system of "triple assurance."

Now one might assume that—as the boards in charge of the granting of concessions were for the most part in a position to delegate to the police authorities or to the employers' association questions involving the protection of the workingman—the procedure for obtaining a concession would have been simplified to that extent. Nevertheless, just the opposite has occurred. The authorities know that they can exert more pressure in compelling the adoption of such directions as are incorporated in the conditions for the granting of a concession because the applicant submits quietly to such conditions in order to be able to begin construction promptly. On the other hand, he invokes his legal remedies against the police regulations. The officials, therefore seek, if possible, to make all workers' protective measures a part of the proceedings for securing a concession.(1) But this activity on the part of the concession-granting boards does not secure the owner against further supplemental requirements, inasmuch as the other two "authorized bodies" are in a position to demand supplemental changes.

Thus it has happened that, in a time of industrial progress and international competition, a retrogression has taken place in the proceedings for the attainment of an industrial concession. The fundamental principle underlying the idea of industrial concessions has been forgotten, as well as the saying, which was incorporated half a century ago in a statement of the reasons for the adoption of an industrial code: namely, that the lawmakers were anxious to replace the police regulations which "are so multiform and so vexatious" by a new set of rules and "to secure" those engaged in industrial pursuits against "supplementary requirements and restrictions."

The question will now naturally be asked, is our system of legislation so ineffectual that it is unable to do away with such

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(1) Prof. Bernhard's lengthy footnote at this point is omitted because it relates to the interpretation of some technical provisions in the German concession rules and police regulations that would not interest American readers.—*Translator's Note.*

patent defects? Adequate and suitable proposals have indeed been made by experts with the object of simplifying and expediting the system of granting concessions and to accommodate it to the requirements of the times.(1) The chemical industry especially lays stress on the right of proving by an operative test that the anticipated defects—which stand in the way of granting a concession—would not in fact occur. In such instances, industrial owners would run the great risk of having equipped their establishments to no purpose. This risk, however, they regard as less costly in the end than the long delays in granting concessions.

In addition, it has been proposed to concentrate the issuance of accident preventive regulations in the hands of one bureau and thus not only to make proceedings for obtaining concessions easier, but also to bring about uniformity in the methods of guarding against accidents.

Why do the legislative instrumentalities pay hardly any attention to these proposals? The answer to this question is to be found herein: The parliamentary situation makes the enactment of such relief measures impossible. The representatives of the agricultural interests take the position that the industrial world, which has to have regard in such a marked degree to social-polity demands, should to the same extent respect the demands of agricultural interests. Every proposed simplification, mitigation or acceleration of concession proceedings are not only vigorously opposed by the agricultural representatives, but steps are actually taken to make the proceedings more complicated and difficult.(2) Inasmuch as the powers that be both in Social Democratic as well as in Agrarian political circles, make more cumbersome, the proceedings for industrial concessions, and obstruct a proper development of this branch of administration, the industrial representatives find themselves in a very difficult position. On this question, they are always opposed by a parliamentary majority, no matter whether the subject of conces-

(1) Thus, for example, it has been proposed that experts from industrial circles should take part in the proceedings. Again, on behalf of those engaged in industry, attention was called to the fact that besides the preliminary permission to build contained, in §19 a, the permission to make an operative test would be of great importance.

(2) The best example of agriculturalist aims is to be found in the "proposition Spee." On February 12, 1907, Count Spee proposed, on behalf of the Centre Party and von Pappenheim, on behalf of the Conservatives, first, that agricultural experts should take part in all proceedings for the grant of an industrial concession, and, secondly, that the Minister of Commerce should not decide these matters solely, as heretofore, but "in conjunction with the Minister for Agriculture, Domains and Forests." This impeding of concession obtaining methods was always to occur whenever "agricultural interests would be affected by the authorization of the industrial establishment." In spite of the determined opposition of the Minister of Commerce, the proposition was accepted by the house of representatives, but rejected by the government.

sions is discussed in the Reichstag, which has jurisdiction of matters arising under the industrial code, or in the Landtag, which has to be consulted in reference to the Prussian "directions for carrying out the law." Almost all the present existing difficulties are to be traced to the unfavorable political situation in which the industrial interests find themselves. Not only are the regulations for the grant of concessions themselves affected by the power of the political majority, but their interpretation is influenced by the groupings of the parliamentary factions.

It is, therefore, by no means proper, as in fact so often occurs, to hold certain individuals or certain groups of officials responsible for the condition of affairs, and to blame them for being "hostile to industry" and for pettifogging. There is not the slightest reason for doubting that the officials entrusted with the execution of the laws, especially the factory inspectors, endeavor to be impartial and desire to act conscientiously and with consideration. Leaving everything personal aside, the following ought to be borne in mind:

The officials have to take into account the provisions of the law, which they cannot circumvent. They are allowed to exercise—and that is the kernel of the matter—"independent discretion." Nor does this mean a limited range of action. For example, §25 of the industrial code provides that the reapproval of a concession is in order "when there have been appreciable changes in the operating methods." The officials are called upon to decide in each separate case what are to be deemed "appreciable changes." An attempt has been made to limit the scope of this activity and the Prussian court of appeals has tried in several instances to define or to circumscribe the term "appreciable changes." But the law courts finally left it "to the judgment of the officials to be exercised in conformity with their oath of office to decide whether the reapproval of a concession was in order or not."(1) At other stages in the proceedings for obtaining the approval of a grant, and indeed just at the critical points (examinations of foundation plans, determination of conditions), the officials are allowed a wide scope within which to exercise their judgment. No one, no matter whose interests he may be called upon to represent, could entertain the idea of abolishing this official freedom of action, which allows the "interests affected" space to turn around in. These would suffer if a "strict letter of the law" interpretation were adhered to. What are, however, the "interests affected"? In answering this question, the officials are consciously or unconsciously influenced by the public sentiment, which has come to assert itself most strongly. Even though the Minister of Commerce, who has the final say in matters affecting concessions, should be ever so de-

(1) Cf. on this point, Tittler: "The Efforts to Bring about a Change in the Methods of Approving Concessions for Industrial Establishments," in the periodical Sozialtechnik for 1911, No. 9.

sirous of helping the growth of industry, he has always, as a member of the ministry, to include the influential parties in his reckoning. Even though the industrial privy councillor should endeavor to act altogether conscientiously, he will nevertheless—perhaps involuntarily—advocate views which will coincide with those of the prevailing political groups. And even if all the incalculable and unassailable political influences were removed today, the tendency of the times would yet remain to exert an active influence. Fifty years ago this influence was struggling towards liberty of action and for industrial freedom; but nowadays—influenced by the course of social development—it is laying stress on the "needful interference of the state."

Whoever considers all these factors, the loading down of the proceedings for obtaining the grant of a concession with social-polity requirements, the delays caused by agrarian political considerations and finally the unavoidable tendency of the times, which affects the independent judgment of the officials—whoever considers all these, will not deem it a matter of passing occurrence should he perceive that proceedings for the obtaining of a concession have become more and more difficult, complicated and protracted. He will not be astonished to learn that industrial owners have to wait eight months as a rule before their concessions are granted(1) and cannot commence construction until after the competing English plants have been long in operation. Nor will he be amazed to hear that the approval of applications is made dependent on improper conditions or such as even *cannot* be performed, and that the records in a case grow in the end into a mound of documents in which are recited a multitude of conditions, covering from 30 to 40 separate paragraphs.

CHAPTER II.

GOVERNMENTAL SUPERVISION OF PRIVATE INDUSTRIAL ENTERPRISES.

So long as there were no officials to supervise the execution of the laws, social-polity legislation existed only on paper. Ever since the time factory inspection was first introduced in England in 1833 all other industrial countries have met with the same experience.

Germany possesses today a system of factory inspection which can be compared in all confidence with the system in vogue in England. To be sure, it is not easy, indeed it is scarcely possible—

(1) Many cases occur in which proceedings for a concession last for more than a year, indeed more than 1½ years.

All the indications, therefore, point to the same conclusions, namely, that the involved proceedings for attaining governmental approval of new private industrial enterprises have become a veritable danger for the competing power of German industry.

for no comparable figures are in existence(1)—to make an effective comparison between international methods of factory inspection. But whoever may happen to read the factory inspection reports published by various nations cannot fail to be convinced that the German system of inspection is carried out more carefully and thoroughly than that of any other country. In making this statement, I am only considering the actual contents of the reports and am not taking into account the much greater number of inspectors relatively speaking to be found in the German Empire. A knowledge and discernment of details appears in the German reports, which far exceed the simple determination of the fact whether the laws are being observed or not. On the other hand the reports appearing in most other countries are confined in the main to a statement of the manner in which the laws are observed. With this conclusion, the observations of German engineers employed abroad coincide, and often one hears with what astonishment the great difference is noted between the discreet control exercised by the factory inspectors in England and the intrusive examination customary in Germany. Indeed, the German inspectors go so far in their zeal for examination that they sometimes even cause misgivings to arise among the workmen. Thus for example, all the Prussian factory inspectors started an inquiry into whether the workmen had breakfasted before beginning work or not.

The outcome of this investigation was not altogether certain, because the workers—"often from a false sense of shame," as an industrial privy councillor remarked—"resented" such an intrusion into their private affairs and "hesitated to give to others an insight into their household matters." When the foremen were then applied to, they "very frequently refused to give any information on the ground that they did not consider it advisable to mix themselves in such personal matters of their workmen."

The question may be left undecided whether it would really have marked a step in advance from a social standpoint if the workmen had laid aside their "false sense of shame," and had expressed themselves freely upon the question, to what extent the matter, "in the case of those married, depended on the wife's capabilities." At least, the inquiry enables one to perceive the zeal for regulation displayed by the higher Prussian factory inspection officials.

Alongside of the control exercised by the factory inspectors, a system of regulation by written documents has grown up in the course of time, which, with its "notices," "schedules" and "statistical information," "forms a triple extension of factory inspection methods."

For example—to describe the form of "notice"—if the em-

(1) Nevertheless, the following figures may be of interest: In England there is one inspector for every 23,000 miners, in Prussia one inspector for every 3,430 miners.

ployer intends to employ women or children, he is obliged to make out a written notice before the employment begins. In this notice there has to be stated the kind of establishment, the week days on which the intended employment is to take place, the time when work is to begin and to cease and the rest hours in between, as well as the nature of the employment. This document has to be handed to the local police, which transmits it then to a factory inspector. The latter sees whether the notice contains all the prescribed information and, if such be not the case, he causes it to be made complete. Finally, the notice is returned to the police authorities. Then, as is stated in the directions for enforcement, the inspector has to notify the employer in writing that, in the rooms where women or children are employed, an extract from the provisions of the industrial code must be posted and, in the rooms where children are employed, a copy of the "notice" which was transmitted to the police in addition.

The activity of the officials does not stop there, however. For the first mentioned extract, the employer has to make use of Form "N," and for the second notice, of Form "O." There are certain kinds of establishments, however, for example, motor vehicle factories, for which Forms "R" and "S" are prescribed in place of Form "N." Other workshops call for the use of Forms "T" and "U," and finally there are others that require the choice of Forms "V" and "W."

The foregoing should be well noted! Thus it has come to pass that the employer is not only supervised by the police authorities and the factory inspectors, but that an indirect control by the workmen themselves occurs in addition. These are able to watch whether the statements made in the posted "placards" are in reality true or not. The law, therefore, has expressly provided that the placard must be posted in a workshop "at a place where it is likely to attract the eye."

Methods of control having thus been carefully provided for, the employer is not allowed to change the stated hours (whether hours of work or rest hours), but is obliged—if business makes an increase or a shortening of the number of working hours necessary—to make out a new "notice" concerning the proposed change, in which event the same formalities have to be gone through with.

This suffices for the "notice." A milder form of written regulation is the "schedule." Thus, for example, if the employer desires to have certain kinds of work carried out on Sunday which cannot be deferred to some other day (urgent repairs, certain kinds of cleaning, etc.), he has to start a "schedule" in which there has to be carefully set out the number of workmen employed, the time for which they were employed as well as the nature of the work carried on. The statement has to be made out in so detailed a form that the official who has oversight of the matter can tell from the statement itself whether the work per-

formed was of such a nature that it could not be deferred. The "schedule" is to be so kept (Form "J") that one can see on glancing at it all work of this kind which has been undertaken in the course of the calendar year.

Alongside of these two carefully prescribed forms of written regulation, a third form exists—the "statistical information"—which is left to the officials to determine. The employers are obliged to give the factory official or the police authorities "such statistical information concerning the situation of their workmen as may have been prescribed by the Bundesrat or the Landeszentralbehörde."(1)

The South German Volkspartei was the only party which early, but in vain, sought to check the flow of ink which streams from these three sources. In a very effective speech delivered in the Reichstag, Payer—one of its members—took exception twenty-one years ago to the excessive amount of written regulation. "Does not that which has already been imposed on the employer suffice?" exclaimed Payer. "Has not the moment arrived when, instead of merely thinking of safeguarding the worker, one ought also to consider protecting the manufacturer against such tasks and burdens which, in my opinion at least, could be dispensed with?"

Such an impression was made by Payer's speech that a majority of the Reichstag applauded him and it almost appeared as though one of the new "written regulations" which had been approved in committee would be rejected by the Reichstag when in full session.(2)

Only through an unsual combination of statesmen was it possible to overcome the effect of this speech. The Prussian Minister of Commerce, Baron von Berlepsch, and the leader of the Social Democrats, August Bebel, opposed Payer's proposition, and, as the third member of the combination, appeared the parliamentary head of the great industrial interests, Baron von Stumm. Stumm feared, at the time, that if the system of written regulations were done away with, the official boards would then endeavor to make the consent of the police authorities requisite for the performance of any extra work.(3) Stumm's attitude, therefore, was assumed purely from tactical reasons. On the other hand, the speeches of the Prussian government representatives and of the leader of the Social Democrats showed in their general tendency a very characteristic conformity. August Bebel, as well as the speaker for the government, acknowledged that they regarded the "schedule" not only as a method of regulation, but also as a means of

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(1) §139 b of the Gewerbeordnung.

(2) The Volkspartei had proposed to strike out §105 c, clause 2, concerning the "schedule." Reichstag debates of February 14 and 16, 1891.

(3) The government representative had indeed threatened to do this after the great impression produced by Payer's speech.

exerting pressure. The inconvenience caused by it was to induce the employer to desist as much as possible from all work out of regular hours. Bebel, therefore, considered the "schedule" to be entirely too mild in form and advocated with all his power the introduction of police lists.(1)

Here is an instance where one can clearly observe how even the fundamental principles of government administration are affected by social policies. If the carrying out of administrative formalities causes annoyance and trouble, it is generally considered as an indication of bureaucratic shortcomings. The principle, therefore, usually laid down is that all formalities should be carried out with the least possible amount of trouble or red tape. However, this elementary principle of government administration is set aside by the exigencies of social politics. As soon as an administrative requirement has the secondary aim of bringing pressure to bear in a given direction, the desire to simplify and facilitate its execution disappears. The inconvenience suffered is intended to produce an effect. The annoyance which has to be undergone is just what is expected to cause the employer to desist from undertaking any unusual work.

If one consider merely social-polity aims, this method can doubtless be defended. Indeed, fineness and subtlety can justly be ascribed to this arrangement. On the other hand, however, it should not be overlooked that through the introduction of this new principle everything of a bureaucratic and pettifogging nature in administrative methods is furthered and aided. An official who takes his time in attending to formalities, finds fault with every little trifle and delights in requests for further particulars, can quiet his conscience with the thought that it is one of the "secondary purposes" of his bureaucratic employment to frighten off the employer from undertaking any extra work. This "frightening off theory" influences also the best of the officials. It injures the character of government administration; and an especial danger lurks therein, that the branch of administration affected is just the one which is the means of connecting the government with the pulsating, industrial world.

The danger is also enhanced by this fact, namely, that bureaucratic tendencies are reinforced by the efforts of the socialists, who are always endeavoring to place industrial undertakings more and more under official control. Thus Hue, one of the Social Democratic members of the Reichstag, requested the im-

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(1) Bebel proposed that the employer should be compelled to furnish the authorities with a copy of the "schedule" at the end of every month. Payer observed as to this: "You, gentlemen," (turning to the Social Democrats) "are the ones who are calling for the police. * * * That agent of government administration who, on account of his functions, is obliged to intrude in matters affecting industry, you term, when this intrusion is distasteful to you, servant of the police; whenever this intrusion is agreeable to you, he is Mr. Inspector."

perial government during the session held on February 6th, 1906, to have a statistical inquiry made concerning the hours of labor required and the overtime incurred in the larger iron making establishments. The Reichstag eagerly accepted this suggestion, and, on February 13th, 1906, passed a resolution calling on the Imperial Chancellor to start the necessary statistical inquiries. After the matter had been carefully considered and information gathered through proposed drafts how such an inquiry was to be carried out and, after the Reichstag had twice admonished the government (during the discussion of the budget for the years 1907 and 1908), the Bundesrat finally issued an ordinance on December 19th, 1908, which provided as follows: In the various large iron establishments, schedules were to be kept in which the names of all workmen were to be entered, who were employed beyond the regular working hours. For each individual workman, there was to be noted:

1. The number of usual working hours, and
2. The number of hours of overtime occurring each day.

At the end of every month, the schedule was to be transmitted to the local police.

An idea of the excessive amount of writing caused by this ordinance can perhaps be obtained simply by glancing at the annexed formulas.(1) In the large establishments, where many hundred or even several thousand workmen are employed, the keeping of these schedules has become a permanent source of trouble, more especially because requests for further information are often necessary in order to determine through the foreman whether "overtime" really took place in a given case or not.

But this sort of checking system, although it goes into such minute details—gives no idea of the real conditions existing. In order to keep the large establishments up to the mark, certain repair and cleaning work must be regularly undertaken on Sundays. For the performance of this work, certain workmen are employed who are allowed a corresponding period of rest during the week days. Their Sunday work, therefore, cannot be termed "overtime work" in the sense of calling for a long protracted period of work, and, as a matter of fact, has never been considered as "overtime," even by the workmen themselves. Nevertheless, the ordinance of the Bundesrat requires that these figures should appear in the "schedule of overtime." According to my researches, this regular form of work constituted from 70 to 75 per cent of the reported "hours of overtime." Thus the actual number of hours of overtime shrinks to 25 or 30 per cent of the total hours reported. Even the hours remaining, however, do not give a picture of the real condition of affairs, for no account

(1) See post, pages 21 to 23. With some slight changes, these forms are taken from the commentary on the Bundesrat's ordinance of December 19, 1908, prepared by Government and Industrial Privy Counsellor. Opperman.

SCHEDULE OF OVERTIME **FORMULA A.**

Establishment ..... Department ..... Month ..... Year .....

1	2	3																													4
Reference Number of Workmen Employed Overtime	Names	Total No. Hours Overtime[1] (Including Rest Hours) .....Hours																													Remarks
		1	2	3	4[2]	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

1) The regular changing shifts are not to be inserted under column 3 as overtime, but all other work performed on Sunday for the full time required.

2) Sundays and Holidays are to be marked in red.

Establishment: Martinwerk Month of April 1912 (10 days only)

1	2	3																		4	5	
Allotted Number	Name of Workman	1.		2.		3.		(4.)		5.		6.		7.		8.		(9.)		10.		No. of Shifts	Overtime	
		T.	N.	T.	N.	T.	N.	T.	N.	T.	N.	T.	N.	T.	N.	T.	N.	T.	N.	T.	N.		Week-days	Sun-days

Remarks:

1. Entries in regard to Sundays and holidays—marked by brackets above—are to be made in red ink.

2. A subdivision for each day occurs under column 3, which is divided into T. and N. = Day and Night shift.

3. In column 6 relating to overtime, a division has been made in each horizontal square. In the upper half, overtime on week-days, and in the lower half, overtime on Sundays, is to be entered.

4. The summary of columns 5 and 6 of this shifts book gives at once the figures to be filled in in columns 5-13 of the "Extract from the wage lists" (§2 Abst. 2 of the ordinance for larger iron establishments).

5. Regarding the entries as to the commencement and cessation of overtime hours, it is required that the real elapsed period of time be entered and not merely an imaginary period (for the purpose of fixing and estimating the extra wages to be paid for overtime work).

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is taken of the following facts, which are of prime importance for the workmen. In the case of the larger iron establishments the reporting of the number of overtime hours is by no means an unfailing indication of business being congested and the employees overworked. On the contrary, every large establishment has to count on operations being almost daily interrupted, and this cannot be avoided under any form of management. Thus in a rolling mill, the failure of a charge to come through obliges the workmen to wait for several hours until such time as work can be resumed, after the replacement charge has worked down. In this instance, only a shifting of work takes place, to which the workman does not object, inasmuch as it results in a considerably higher pay without any increased exertion. Yet the Bundesrat's "schedule of overtime" takes no note of this important distinction. Nor can it take note of it, for all phases of the various pursuits involved can never be covered in a single form devised primarily for purposes of control.

How Many Times Overtime Occurred							
Up to 1 Hour	More Than 1-2 Hours	More Than 2-3 Hours	More Than 3-4 Hours	More Than 4-5 Hours	More Than 5-6 Hours	More Than 6-7 Hours	More Than 7 Hours

CHAPTER THREE.

GOVERNMENTAL REGULATION OF PRIVATE INDUSTRIAL ENTERPRISES.

No proof is needed of the difficulty of drawing official regulations so as to fit all varying forms of industrial conditions. For example, one need only glance at the regulations concerning the observance of the Sabbath day rest to see how phrases have to be turned and twisted in order to express all that is desirable and necessary.

First there is the underlying principle: Everyone is at liberty to work when he pleases, for that is "a matter in which entire freedom of agreement is permitted." (§105).

To this there is a general exception, namely, that workmen cannot be compelled to work on Sundays (§105a). In addition, there is a special sort of exception, namely, that in certain kinds of occupations workmen are not allowed to be employed on Sundays.

These two exceptions in turn are subject to four exceptions:

1. In certain instances, enumerated in detail in §105c, work can be carried on Sundays without the especial consent of the authorities.

2. In certain occupations "which on account of their nature, do not permit of an interruption of operations," the Bundesrat is permitted to allow an exception to be made concerning the rule for the observance of the Sabbath (§105d).

3. In certain occupations, "the carrying on of which is necessary to meet the daily wants of the people," the Regierungspresident is allowed to grant an exception (§105e).

4. In the case of certain kinds of work required "to prevent a disproportionate amount of damage," the local police can allow an exception (§105f).

Again, to the above exceptions 1 to 3 there is a condition: Even if work on Sunday is permitted in certain cases, the workman must have every third Sunday free (§105c, Subdiv. 3).

To the above condition, however, the following exceptions apply:

1. A general exception that if the work on Sundays does not last for more than three hours the workmen may be employed "on every third Sunday."

2. A special exception, that if the workmen are allowed a 24-hour rest period on a week day, the police authorities can allow them to be also employed on a "third Sunday" (§105c, Subdiv. 4).

It is thus that the commandment, "Thou shalt observe the Sabbath day," is stated in the language of the law!

Whoever studies these or similar contortions of paragraphs may perhaps be too easily inclined to blame our system of factory regulation, which has been termed "a checkered system of exceptions." But as soon as one reads about the causes at work and examines the records for several decades back and determines word for word how everything has come to pass, it is self-evident that sagacious men have laboriously and in the course of years thought out the present system. Not neglect of any kind or bureaucratic whims are at the bottom of the trouble, but the vital difficulties are to be found in the subject matter itself. Of course, everyone knows that the safeguarding of the workingman and the protection of life and health cannot be carried out without some government regulation and that the German workingmen's protective legislation has brought about an immense amount of good. Nevertheless, it will never be possible to come to a definite determination as to how far the state ought to interfere with its system of regulations. Theory and practice will always be in uncertainty as to where should be drawn the line beyond which one should not go.

This constant state of uncertainty leads naturally to a never ending contest of parties. No doubt exists any longer that the line is being drawn more and more on the side of governmental regulation. Every political party is desirous of producing results in matters of social legislation; and the great parties, which are dependent on the support of the workingmen at election times, have to show at every parliamentary session, that they deserve the support of the masses. It is for this reason that the government is overwhelmed year after year with resolutions and propositions calling for more and more governmental interference.

Under such conditions, it was quite in the natural course of events for governmental regulation to have gradually turned from matters of general import—which had already been definitely disposed of—(protection of women and child workers, rest on Sundays, etc.) to matters affecting the operation of industrial enterprises. As we have seen, it is was difficult enough to find a satisfactory form, which the industrial world could tolerate, for the simple and desirable ordinance regulating work on Sundays. But it is extremely dangerous if the law goes too deeply into mat-

ters affecting more particularly the operation of industrial enterprises, such, for example, as the regulation of rest periods.

Whoever has read the social polity debates, which have occurred in the Reichstag during the last six years, will find that "regulation of the hours of rest" plays an important part therein. The general tone of the discussions has been set by the members of the Social Democratic group and eagerly followed by the representatives of the other parties. The train of thought has been indeed very plain and enlightening. The according of sufficient and suitably divided rest periods was deemed of more importance than the shortening of the hours of labor or the installation of certain sanitary appliances. This should be a proper field for state intervention. Soon it appeared as a quite generally assumed fact among the representatives of the people that there could be nothing more harmless or more natural than the "regulation of the periods of rest."

In accordance with this idea, an ordinance was issued which officially regulates the rest hours in the large iron establishments, as follows:(1) If the number of working hours exceeds 8, every workman must be allowed at least two hours of rest. One of the rest periods must be at least one hour long and must occur "between the end of the fifth and the beginning of the ninth working hour." "Interruptions" in works of less than 15 minutes' duration are not to be deemed rest periods. The higher administrative officials can allow certain exceptions to these rules to be made under certain circumstances. But the length of the prescribed two-hour rest period can be diminished only in case the interests of the workmen are served by it.(2)

In order to prevent any evasion of this requirement, it was expressly ordered "that a regular, even though it be merely a supervising activity, cannot be imputed to the workmen during the rest hours."(3)

The state inspectors, therefore, declared it inadmissible that, for example, a boiler tender should look after the water pressure during the rest hour. Indeed, it was even demanded that machine and boiler tenders should leave the machinery house during the rest period. Likewise the machinists employed on coke discharging machines were directed to leave their machines during the rest hour, inasmuch as their remaining near them was to be treated as watching the machines.(4)

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(1) On December 19, 1908.

(2) "If consideration for the workmen makes this seem desirable." This provision is intended to afford the workmen an opportunity of obtaining a shortening of the rest hours "if there is joined therewith a corresponding earlier dismissal from work."

(3) Decree of January 19th, 1909, of the Prussian Minister of Commerce.

(4) These demands were made despite the fact that during the rest hour the boiler fire was banked and the steam pressure reduced to the equivalent of one or two atmospheric pressures.

Severe demands were made of blast furnace and hot metal furnace owners. When the industrial heads then called attention to the fact that the regulations were impossible of execution and constituted a grave danger(1), the factory inspection service replied that reserve hands could be provided to serve during the rest periods. The fact was, however, overlooked that the employment of reserve workmen has a hazardous moral effect. While the shift's force formerly felt themselves responsible for all that occurred during the time of their shift, a part of this responsibility now has to be left to the reserve crew. Thus one shoves on the other the responsibility for any dangerous neglect which may have occurred. Nor do I intend to dwell on the fact that it is hardly ever possible to secure an equally competent reserve force. It is impossible for workmen, who in the course of their employment are called upon to relieve others for half-an-hour here and for an entire hour there, to possess the same intimate knowledge of or to take the same interest in their work as the regularly engaged force. Under these circumstances, even the Prussian associations for the inspection of boiler risks felt it necessary to state their scruples, based on reasons of safety, against the government method of regulating the rest periods.(2)

It is easy to understand why the endangering of the safety of operating methods should occupy the first place in all discussions concerning state regulation of workmen's rest periods. But this touches only one side of the question and not the most important side. Quite apart from the matter of operating-safety, the introduction of state regulation of the rest hours marks an important encroachment on the masters' liberty of action.

In order to estimate the value of this one should bear in mind that in the great industrial establishments, where from 1,000 to 10,000 workmen are employed, a planning of work according to a fixed detailed schedule is impossible. Irregularities in oper-

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(1) Experience showed, for example, that in blast furnaces the temperature had doubled after an intermission of three-quarters of an hour. For the temperature rises, the deeper the burden sinks. After such an intermission, it required about three hours of steady feeding for the normal temperature to be attained. But through these changes in the temperature, the entire furnace is endangered and dangerous repairs, requiring much time, become necessary. Again, as a result of the rapid rise in temperature during the intermission hour, the air in the furnace becomes of unequal density. As a consequence of this, gases escape, which endanger the workmen when they resume their work. Side by side with these changes in temperature, other undesirable occurrences take place. As a consequence of the burden having sunk so low, the coke, when the needful charge is made, falls from an abnormal height and breaks into pieces. On being dropped the same distance the heavy ores completely disintegrate the coke. Thus an unfavorable mixing of materials takes place which causes an interruption of operations. For further details see Matthiæ's interesting work, "Observations concerning the rise of blast furnace temperatures during lengthy periods of intermission."

(2) In this connection, a sharp difference of opinion arose between the Prussian boiler inspection associations and the Minister of Commerce.

ation occur daily, which have to be overcome by prompt and dexterous measures. A stoppage in one department will influence the running of the whole plant. To be sure, if one reads the statement which the German Metal Workers' Union has published concerning the regulation of rest hours by the state,(1) not a word is to be found concerning the question of freedom of action so indispensable in business undertakings. On the contrary, one gathers the impression as though it were possible to operate the larger establishments with systematic exactitude and with everything divided off to the last minute of time. This impression—fathered by all those who would like to extend the scope of government regulation—is perhaps the most dangerous misconception for the future of German industrial life which can exist. For our age—which, under the influence of social development, so inclines to regulation by the state—has almost entirely lost the belief in any independent personal and individual initiative.

Intimately joined to this state of affairs is the effort to gradually shove aside the self-governing organizations which our industrial world has created. Two groups of such self-governing bodies are to be considered in this connection: the boiler inspection organizations and the employers' associations. To these the law makers entrusted important functions because of the conviction that a system of direct government supervision would be too inflexible and too little susceptible of adapting itself to changing industrial requirements. Nevertheless, the government net is always being drawn tighter and tighter around these corporate bodies. For example, the Prussian Minister of Commerce sharply repelled the boiler inspection associations when they raised objections to the government methods of regulating the workmen's rest periods (2) and the employers' associations are not only overlooked but are even unlawfully superseded by the government officials.(3)

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(1) Die Schwereisenindustrie im deutschen Zollgebiet, ihre Entwickelung und ihre Arbeiter, published by the executive committee of the German Metal Workers' Union. Stuttgart, 1912, pages 583-621.

(2) In a circular dated January 10th, 1911, the Minister of Commerce denied the right of the central organization of the Prussian boiler inspection associations to interfere in matters of social-polity import. Thereupon the following reply was made: 'The question at issue (regulation of the rest periods) is intimately connected with the safe operation of boilers. In view of the facts heretofore ascertained by us, there can be no doubt that the application to boiler firemen of the rules as to rest periods results in the safety of these boilers being endangered. Fear of the consequences gives the management not only the right to interfere in the matter, but makes it indeed its duty. In view of the exceptional importance which this matter has for the safe operation of boilers in the establishments affected, we intend to make its detailed discussion one of the subjects to be brought up at the next meeting of our members. To this the minister replied (April 5th, 1911,) that under no circumstances could he allow an official to take part in the discussion and that he was not in a position to pay heed to any further remonstrance.

(3) This is true, for example, of the Oberpräsidialverordnung of

CHAPTER IV.

GOVERNMENT ACQUISITION OF PRIVATE INDUSTRIAL UNDERTAKINGS.

In 1876, when the question of government acquisition of the railways had pushed all other questions of internal politics into the background, Wehrenpfennig wrote:

"Compared to the conditions existing with us, conditions in France are a model of orderliness. We have 63 separate railway managements, which consider themselves more or less sovereign. The traveler who goes from Berlin to Karlsruhe has to make has to make use of seven independent railway systems. Not even a railway official—and much less an ordinary citizen—is in a position to find his way correctly through the labyrinth created by the 1357 existing tariffs and to calculate exactly what it will cost to transport a piece of freight from one end of Germany to the other. Conditions such as these cannot last. They are just as much opposed to the requirements of traffic and to the welfare of the nation, which it is the duty of the Empire to foster, as were formerly the custom barriers, which shut off from one another the 38 sovereign states of the old Bundestag."(1)

Only two possibilities existed. Either the numerous private railways had to be combined into a few large railway systems or the government would have to operate them. Although this question was bitterly fought over at the time, every one realizes today that state management of railways has had a brilliant success. France, whose railway systems we heard at that time praised as a model of orderliness, has experienced some trying disillusions with its "mixed" system of operation, and in England, since the severe trials of the summer of 1911, the question of state acquisition of railways is being actively discussed. In Germany, the matter was taken up in time. In this way the wasteful system of railway speculation, which Lasker described in his his-

(1) Preussische Jahrbücher, 1876, p. 440.

July 30th, 1910, concerning the installation and operation of elevators. Concerning this, the Dartmund Landgericht on November 9th, 1911, handed down the following decision: "The Oberpräsidial police ordinance has been issued without the employers' associations having been consulted. It contains regulations concerning the installation and operation of elevators in industrial and private establishments, regulations, which as far as they apply to industrial establishments have in view the greatest possible protection of the workingmen against dangers affecting life and health." According to §120e of the industrial code, before such regulations are issued the employers' associations affected have to be given an opportunity of expressing themselves in a written report. "This provision, which was inserted by the Reichstag in spite of the objections made by other parties, is, according to the prevailing opinion, not only of directory, but of mandatory force. Consequently, the failure to cite the employers' associations results in making the ordinances affected null and void. (Cf. Urteile des Kammergerichts of December 27th, 1900, and of November 25th, 1902)." As far as industrial plants were concerned, therefore, the Oberpräsidialverordnung was declared null and void.

torical speech in 1873, was done away with. Today Prussian state finances are firmly based on the government enterprises whose cost runs into the thousand millions.

Thus state management in Germany made its debut with a striking success, which proved only the beginning. Encouraged by the success of the central government, the German cities took a hand, blossomed forth as backers of large industrial enterprises and achieved brilliant results when they themselves undertook to furnish water and gas to consumers and to operate electric systems on their own account. Thus it was proven by actual experience that railways and street car lines can be well run and the population advantageously supplied with gas, water and electricity by the central government and by the individual communes.

All of these undertakings have one important feature in common. They can and have to be organized on rigorous lines. Indeed, they will run all the more smoothly the more one succeeds in making uniform the methods of railway operation and those of furnishing water, gas and electricity. The rigorous—I might almost say the military—discipline which the officials are subject to is of decisive importance for the successful operation of these undertakings. Even the irregularities occurring in their operation (stoppages of operation, lack of a sufficient number of cars) are of such a nature that they are best overcome by preparing for them systematically. (Instructions to be observed in case of stoppages of operations, etc.) In these sorts of undertakings, therefore, certain factors are required for a successful organization over which the state can dispose fully as well, indeed probably to better advantage than private individuals. To this should be added the fact that all these kinds of undertakings require either the use, the crossing, the excavation or the bridging of public highways, whereby a conflict of interest there arises. This is entirely avoided as soon as the central government or the communes carry out the undertaking. From the standpoint of organization, therefore, the state and the communes are in these sorts of undertakings certainly on an equal footing with private individual operators.(1)

(1) Undoubtedly, under the pressure of modern municipal socialism, some cities, communes and districts have gone ahead too fast, and the hasty absorption of new forms of indebtedness has often disturbed the security markets. While the German communes had 772,000,000 marks of indebtedness in 1881, the debts of the communes were 5,684,000,000 marks on December 31st, 1910, or about 750,000,000 marks more than the debt of the German Empire. The efforts made to put the indebtedness of the communes on a sound footing have not yet come to fruition. The question whether the enterprises undertaken by the communes pay or not has been debated in literary circles. Trustworthy comparisons are not possible between all the cities, because the methods of bookkeeping (amounts written off, etc.) are not the same everywhere. Recently Max Andler, in a very interesting work, "Die Städteschulden in Frankreich und Preussen," (Stuttgart, 1911) has attempted a calculation of their profitableness based on the official statistics of indebtedness. Andler arrives at a very favorable conclusion concerning the lucrativeness of communal enterprises.

While thus in our age the movement for state acquisition of private enterprises has made great headway and has obtained general public support, deep seated changes occurred in private industry which apparently paved the way for the government taking over new branches of industry. A movement for concentration, of increasing force from year to year, has been taking place in the private industrial world. Stock companies have been formed which have each absorbed quite a number of important independent plants. The great stock companies have in turn joined in forming enormous industrial units and these have finally formed themselves into huge cartels and syndicates. In place of the little tiny offices in which our fathers and grandfathers carried on their business, imposing administration buildings have arisen. In these, a general manager holds the reins, surrounded by a number of lesser managers, and below these, a staff of officials. The work of these last appears to be quite similar to the work performed by the government officials in the administration buildings of the railways and of the post office department. A form of organization has developed with the resultant acquisition of certain bureaucratic features by private industry. Thus the great industrial combinations seem to work in the direction of and to prepare the way for government ownership. What can a single individual accomplish nowadays among the elaborate mechanisms which technical and economic changes have created?

The answer to this question is by no means so simple, however, as has been assumed in the theoretical study of political economy. It seems almost as though the theorists had become intoxicated with the idea that socialistic ideals were being realized through the grouping into cartels of the great industrial combinations and through their having created a bureaucratically arranged system of production and thus replaced the former private owner by a sort of impersonal mechanism.(1)

(1) One should read the proceedings of the Verein für Sozialpolitik entitled "Das Arbeitsverhaltnis in der privaten Riesenbetrieben" and "Das Verhaltnis der Kartelle zum Staat," in the Schriften des Vereins für Socialpolitik, Volume 116, Leipzig, 1906. A similar train of thought is to be found in the works of Adolf Wagner, who, for example, recently stated: "If one makes the comparison, one should not overlook the fact that in all large private and corporate industrial undertakings, a sort of bureaucratic organization—not at all dissimilar to that to be found in state-run enterprises—has sprung into existence, strict relations to those in authority and a state of rigorous dependence. * * * You are located here right in the centre of the great Rhenish-Westphalian industrial field. The principal coal producing area in Germany has, thanks to the provisions of the mining law, passed into the hands of private individuals, mining and stock companies, and is worked in order to produce a profit for the companies interested, that is, for their owners and stockholders, for their directors and managers with their colossal salaries and tontines and for the payment of dividends. I admit that remarkable results have been accomplished under this system. But could not the state, as a matter of fact, accomplish just as much and would not then all these profits blow into the pockets of the general public?" Proceedings of the 23d Evangelical-Socialistic Congress, held at Essen, May 28th-30th, 1912. Protokoll, p. 47.

This opinion, which is becoming all the time more and more widespread and which leads to important political consequences, I deem to be one of the most dangerous fallacies of our age, both because it *seems* to coincide with the truth and because it is based on analogies which are especially susceptible of acceptance in this era of social legislation. Inasmuch as I am dealing with the undesirable effects of German social legislation, I consider it necessary to comfute this fallacy in all its aspects. Therefore I propose to make an examination of that branch of industry in which the concentration and bureaucratic perfecting of private industry is the furthest advanced and in which, on the other hand, state ownership is making the greatest headway, namely, coal mining.

The Prussian government is today the greatest coal mine operator in the whole German Empire. The state has a numerous, trained force of officials, which is thoroughly conversant with all the ins and outs of mining. The mines in private hands, however, under the auspices of the great banks, have joined in forming powerful companies and are so closely united in a coal syndicate that a finely organized administrative system encompasses the entire industry. In view of this all-opposition-crushing form of organization, we may ask again the question, what can a single individual accomplish in this colossal machine?(1)

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(1) The parliamentary investigation which was carried on in the years 1910 and 1911, in consequence of a resolution adopted by the Abgeordnetenhaus, has furnished excellent material for answering this question. In the session of the Abgeordnetenhaus held on March 1st, 1910, it was resolved to appoint a subcommittee of the budget commission with the following assigned duties: (a) Of examining into the question of how the government operation of mines could be made to produce better results without endangering economic or social-polity requirements, and (b) Of submitting a writen report concerning the results of their investigations. The investigations were started immediately and a session took place on April 21st, 1910, in which privy councillors from the ministries of Commerce and of Finance took part as representatives of the government. The committee requested from the government a report regarding technical conditions and the special equipment used in certain of the state mines, also a summary of the operating results for a number of years past of the mines in question, included in which were costs per workman employed and per ton of coal produced, the average coal production per miner, timbering costs or, where such a case applied, the cost of iron props, the methods of reckoning value of property on hand and receipts, additions and depreciation, the amount of coal produced in cross-cutting and drifting as compared to the amount called for in the course of the year, and the social legislative burdens and taxes. The government furnished the desired material to the investigating committee and added thereto a memorandum concerning the development of state operation of mines in Prussia (printed in No. 307c of the Drucksachen des Hauses der Abgeordneten, 21 Legislaturperiode, 4 Session, 1911, pp. 1 to 20), also a statement of the mine officials in answer to certain questions of the subcommittee (printed as above, pp. 21 to 46), and furthermore a set of illustrations and tables, besides a memorial regarding the make-up of the mining budget.

Based on this material, a report was prepared and considered in a session held on March 8th, 1911. Besides the members of the subcom-

At the head of every coal mine we find a mining superintendent and we soon ascertain that the profitableness and the development of the mine depends mainly on his ability, knowledge and energy. According to those who are in a position to know, a newly appointed superintendent requires from three to four years to thoroughly familiarize himself with conditions both above and below ground.(1) Based on the knowledge of conditions thus acquired, the superintendent gradually develops his plan of operations, and the consistent carrying out of this plan becomes his life's work. His success in his calling, his material prosperity and his reputation in the coal-mining industry depend on whether or not he knows enough to carry out his plan of production with consummate skill. This question is also of paramount importance for the shareholders and those having profit-sharing certificates of interest in the mine. The privately conducted mines, therefore, seek to secure for such positions men of ability, who are still at an active and adaptable age, and to retain them in their positions of responsibility for as long a time as possible. The superintendents of the privately owned mines are generally appointed to their positions when they are from 30 to 35 years of age and remain at their posts for 30 years or more.

A general inquiry conducted in October, 1912, gave the following results:

Out of 60 mining superintendents of private companies, there had remained in their positions

1 for 1 year
1 for 2 years
2 for 3 years
1 for 4 years
1 for 5 years
2 for 6 years
4 for 7 years

That is, only 12, or 20 per cent., of the superintendents of these privately owned mines had been in charge of the operations entrusted to them for seven years or less.

On the other hand, there had remained longer in their positions

5 from 8-12 years
5 from 13-15 years
12 from 16-20 years
16 from 21-30 years
7 from 31-40 years
3 from 41-51 years

(1) Bericht, No. 307b, p. 31.

mittee, representatives of the government also took part at this session. On May 4th, 1911, the report was considered in detail by the budget committee of the Abgeordnetenhaus. (Drucksache, No. 307a and No. 307b).

The age at which the 60 acting mining superintendents of the private companies took office has been given to me as follows:

4 at the age of 28 years
2 at the age of 29 years
9 at the age of 30 years
23 at the age of 31-35 years

Therefore, 38, or 63 per cent., were less than 35 years old.

How entirely different are conditions in the government service. Of the 82 government superintendents, there had remained in their positions(1)

6 for 1 year
11 for 2 years
8 for 3 years
7 for 4 years
7 for 5 years
9 for 6 years
9 for 7 years

Thus about 70 per cent. of all the superintendents of the royal mines in the Saarbrucken district had managed the mines entrusted to them for seven years or less. Regarding this fact, the investigating committee makes the following remark:

"It must appear as a very serious matter whenever a manager who has only just begun to carry out his plans in a practical way is promptly replaced by a successor. The latter is not sufficiently well informed concerning his predecessor's intentions and tries to make the preparatory work heretofore done fit in with his own fixed plans. In striving to attain this object, he has also to solve the still more difficult problem of winning over to his plans the officials who have been trained to follow the ideas of his predecessors. A change every four or five years in the position of general manager must naturally result in the subordinate officials having control of matters to a considerable extent. In the Province of Saarbrucken especially several unpleasant experiences of this kind have occurred. As matters stand today, the subordinate officials are, so to say, the axis on which everything turns in this interplay of forces."

"These drawbacks are aggravated by the fact that the government superintendents are much more overburdened than the managers of the privately owned mines with formal documents, writings and reports of all kinds. The state officials expressly concede this in the following words: It should be remembered 'that the extent of administrative formalities is much larger in the case of a government owned than of a privately run mine. The numerous returns and written reports, which are unavoidably connected with a governmental organization, as well as the

(1) Bericht, No. 307B, p. 31. The government superintendents assume their positions at an age of from 38 to 42 years.

detailed labors caused by the government system of budget making, of audit and of requiring vouchers, in which matters the mine superintendent above all others must take a hand and the other high officials as well, all these in privately owned undertakings are either entirely done away with or dispatched in a much simpler and less exacting way.' In a business run by private individuals—inasmuch as the superintendent is perpetually being checked up by persons actively interested, either by the owner, or a committee of directors, or a board of managers—the possibility always exists of simplifying a too detailed system of control without running the risk of not being sufficiently well posted. The interested parties also see to it that the labors of the superintendent are lightened through the employment of inspectors and technically trained assistants, while the high mining officials in the government service are often overburdened with petty details."(1)

Of still greater importance is the following circumstance: The parliamentary commission was especially struck with the fact that in contrast to the managers of the privately owned mines, the state mining superintendents were greatly restricted in their freedom of action. The government has expressly conceded this lack of freedom of action. In its memorandum, the following is stated:(2)

"The limited freedom of action accorded the higher officials, which has been so much regretted, is more or less closely connected with the fact that the administrative officials of the mines have to reckon with a budget, the drawing up of which has to be begun before the course of the ensuing industrial year can be foreseen. All estimates of receipts and expenditures are thereby made more difficult and uncertain. The selection of the most favorable moment for making improvements is also made difficult, as well as the observance of the principle, so important both from a fiscal and from an economic standpoint, namely, to take advantage of a period of bad times when prices are low for the carrying out of improvements and thus to furnish orders to depressed private industry. Furthermore, it is a drawback that the budget of the department of mines has to be accommodated to general financial conditions in such a way as may seem best in order to have the budget balance in every single budget year. But this may influence the enterprise unfavorably and also the

(1) Denkschrift, No. 307c, p. 26. The government memorandum concedes this in the following words: "The fact has not been taken into account that the private mining industry employs a large number of university educated engineers, especially of machinery engineers, whose employment in the state mines means more work for the higher mining officials. Nor has it been taken into account that these last are obliged to perform certain duties which, in the private mining industry, are attended to by inspectors not university bred, such as have been promoted on account of their especial efficiency from the ranks of the foremen."

(2) Denkschrift, No. 307c, p. 28.

government receipts—if one looks beyond the results of a single budget year. The protracted budget proceedings are found especially trying in those cases in which the speedy installation of a new operating appliance is known to be advantageous and profitable. A fund is indeed available at the central office for unforeseen, urgent betterments. But it is so small in amount that it is employed more in the prevention of losses than in the making of profitable improvements."

Yet the trouble (1) is to be found not only in the system of budget making, but also in "the lack of freedom of action as regards the choice, pay, appointment, advancement and dismissal of employees. The granting of increases in salaries and of premiums also helps to make it harder for the mining superintendent to conduct matters with success. The superintendent lacks the power of exercising an effective control over the officials and of thereby increasing his authority and the success of his management. For example, what is a superintendent to do if a mining shift fails to work to full capacity and he is not in a position to dismiss the men, because he is hampered in employing other workmen and must also keep wages up to a certain prescribed level?"

The difference between government and private management becomes more plain if one considers that "officials in the middle grades" cannot be removed, even though they perform very inefficient services. In its memorandum the government has indulged quite unreservedly in the following reflections, to which, on account of their general importance, I would like to call attention: (2)

"In the opinion of the bureau of mines, the raising of those employed in the middle grades of the service to the position of government officials has not met with the desired success. In this respect, private industry works under more favorable conditions than state mining. In the former these employees are subject to dismissal and furthermore their interest in effecting economies and savings is always being kept alive by a widespread system of premiums. It is true that the large majority of the government mining officials show a very active interest in their work and, thanks to the zeal displayed by the better equipped among them, play a very prominent part in the development of the mines. But among the great number of these officials, there are nevertheless others, who report promptly for work, it is true, and against whom one cannot prove any intentional neglect of duty. These do not, however, take the necessary interest in their work, and are not as active as should be expected. It is impossible to better matters by a system of disciplinary punishments. An official, who fails to fulfil his duties on account of lack of ability or

(1) Bericht, No. 307B, p. 74.
(2) Denkschrift, No. 307c, p. 29.

intelligence, cannot be punished. Furthermore, the lack of interest displayed is seldom so great that neglect of official duties or a punishable offence can be clearly proven. The example set by one or several of such officials also exerts a bad influence on the others. If these last see that even if little work is performed, the salary is raised just the same as before, and that even though more industry be displayed and better results accomplished they receive no higher pay than a negligent official, it is quite natural for their zeal to slacken. In this way, the average amount of work performed is cut down. This drawback is of all the more importance because the mining officials exert a very great influence in the matter of net costs."

It is easy to understand why the parliamentary commission devoted especial attention to this question, and its report contains this momentous sentence: "The bestowal of official positions has resulted in a lack of interest, a slackening in the zeal for work and a lessening of the average amount of work performed."

In view of such official confessions and of the results established by the parliamentary investigation, it was natural to hold the state administration responsible for the conditions revealed and to ask the government to do away with these evils. The Abgeordnetenhaus, therefore, demanded that the budget of the state mining department should be prepared after the manner of the balance sheets of private industrial undertakings and that —just as in private employments—the superintendents and the underground foremen should obtain an interest in the profits of the mine by a system of *tantiemes* and of premiums. The government agreed to this readily, changed the form of the budget and demanded a grant of 124,000 marks for the share in the profits to go to the higher officials and 278,000 marks premiums for the middle grade officials of the government mines.

The mere announcement of this measure had an interesting effect. Immediately, through the parliamentary representatives, several classes of officials were heard from who had not been considered among those who were to share in the proposed *tantiemes* and premiums. Already in the sessions of the budget committee, the government was urged "to allow the mining inspectors of the state" mines to share in the profits, because these were an important factor in making the mines profitable. Furthermore, in the session of the whole house it was hinted that the "machinery drill men" would have to share in the premiums and even the "royal mining surveyors of the mining district of Saarbrücken" sent a petition to the members of the Abgeordnetenhaus in which they asked for a share in the profits or premiums. But the following occurrence appears to me to be most characteristic of all. As Abgeordneter Brust mentioned, the underground foremen were formerly opposed to premiums from principle. But as the government inserted in its budget a premium fund, they "became reconciled to the matter" and only demanded "consid-

erably hgher premiums."(1) Thus supported by the large parties, the officials make their demands known and the Prussian Minister of Commerce declared with justifiable irony in the Abgeordnetenhaus: "Last year it was stated on all sides that the mining department exchequer should be run more according to business principles and today all these fine plans have ended in smoke." The Minister of Commerce let it be clearly seen that in the case of the Abgeordneten fear of the electorate was one of the impelling motives.(2) The members of the Abgeordnetenhaus thoroughly understand that the officials and the workmen in the government service wait until the time of the elections for the Reichstag before they settle accounts.

Here we encounter the determining factor. One may talk as much as one likes about the reform of government business methods and about the principles of business management, the fact has to be recognized in the end that defects are here involved which, as far as government administration is concerned, can never be got rid of. Just as parliament and the government appointees advise and admonish regarding the distribution of official premiums, these same two forces make their influence felt in all branches of government administration. For example, when the government officials voluntarily conceded that it had been a mistake to bestow on "employees in the middle grades" of the government mining service the position of officials and it was then considered whether former conditions might not be restored, the authorities urged in opposition thereto that "they did not wish to be confronted with the hearty ill-will of the mining officials, which would be certain to occur." To this they added this statement, which is interesting on account of the principle underlying it: "Especially in view of the continuous extension of the number of government officials in the railway service, one is obliged

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(1) "The middle grade of officials of the government mines have become reconciled to this measure; they only ask for considerably higher premiums than is proposed in the budget. If they are to receive at the outside only 240 marks more yearly and the higher mining officials up to 2,580 marks more on the average, then as compared with the last the former sum appears insultingly small and indicates evidently a disregard of the importance of the work performed by the underground foremen." Abgeordneter Brust in the Abgeordnetenhaus on March 4th, 1912.

(2) The Minister of Commerce said: "After all the previous speakers have sought to commend themselves to the voters of their election districts by warmly seconding the requests for an increase in the wages of miners, it is difficult for me to enter into competition with them. The matter does not end with a declaration such as I may make here, but either I or the administration represented by me is every year urged to carry out this declaration to its logical conclusion. In this sort of competition I am at a disadvantage. Therefore, I am obliged to confine myself to purely sober realities, but desire to interpolate here how greatly interested I was to hear that the Secretary of the Saarbrucken Chamber of Commerce expressed himself also so warmly for an increase in the wages of the miners, *nota bene* at the expense of the government exchequer."

to exclude all thought of undoing this step as regards the government mining officials."(1)

This statement is interesting for the principle underlying it, because it shows clearly how as the number of officials grows, the various branches of the government service are affected by considerations which make a proper kind of management appreciably more difficult. If it be stated at another time that a change "would encounter too many difficulties on account of the resultant comparison with other classes of officials" and if a less advantageous measure is recommended by the authorities because it could be carried out "without causing an upsetting of the scale of salaries,"(2) these are but external expressions of the constraint for which no person or set of officials can be held responsible. The more the scope of government activities is extended and the number of officials increased and the more the members of parliament feel obliged for election purposes to pay heed to the demands of the officials and workmen engaged in government employments, the more oppressive will this sense of constraint appear. Even though the state should imitate in its industrial budgets and manner of reckoning *tantiemes* the methods of a private employer, it is nevertheless unable to conceal how few it possesses of those qualities which enable the private employer to seek out new openings and to forge ahead along new lines.

(1) "Aesserung der preussischen Bergverwaltung Drucksachen" des Abgeordnetenhauses, No. 307 C, p. 29.
(2) "Ausserung der preussischen Bergverwaltung," p. 27.

PART TWO.

THE STRUGGLE FOR INSURANCE PENSIONS.

INTRODUCTION.

"It is the weighty task of the law-making branch, in the interest of the working population as well as in that of the whole people, to make use of every available means of preventing as far as possible covetous ideas from exerting an influence on the granting of pensions. The neglect of this duty would necessarily result in a diminution of the love for work and of the sense of moral responsibility among such of the insured as no longer possess their full working powers and at the same time cause an injury to the people's working strength." Thus did the Imperial Insurance Office express itself in 1906.(1) Today, however, many observers doubt whether it will be at all possible to avoid this injury to the people's working strength.

In order to do away with all misunderstanding from the start, I wish to emphasize the fact that in employing this form of characterization, nothing is said which in any way reflects discredit on the working classes. Long before the development of German workingmen's insurance, physicians had realized that the railways (employers' liability) and the insurance companies had to carry on a constant warfare against unjustifiable demands. It was also known in this connection that members of the "upper classes" also were distinguished for exaggerating their injuries until the attainment of an indemnity cured them with extraordinary rapidity.(2)

The desire to derive a profit from an accident is so human that a prominent physician has designated such "enrichment ideas" as "entirely normal occurrences even with the best of our people."(3)

The real danger lies herein, however, that a wide field was thrown open to this human weakness when the system of pension insurance was compulsorily introduced and when—partly out of ignorance and partly from a wish to win the masses—necessary safeguards were neglected and a cast was given to government pension insurance which is just provocative of abuses.

In a country where many millions of people are insured under a uniform system, many millions of eyes are naturally being di-

(1) Amtliche Nachrichten des R. V. A., Vol. XXIII.

(2) Rigler: Ueber die Folgung der Verletzungen auf Eisenbahnen, insbesondere des Rückenmarks Dargestellt mit Hinblick auf das Haftpflichtgesetz. Berlin, 1879, p. 7.

(3) Cramer: At the meeting in 1907 of the southwest German neurologists and alienists.

rected continuously to the mechanism devised for the spending of the insurance money. Every defect therein is spied out and made full use of, everything that offers a possibility of success is tried and becomes quickly known among the great mass of the people. And this "posting" of the masses is by no means dependent upon chance, but is thoroughly well organized. Today the workingmen's unions—including both the Social Democratic and the other unions—have their "permanent representatives at the Imperial Insurance Office—secretaries, who not only assist the workingmen in their lawsuits, but who also supply the press with copy and keep the members of the Reichstag posted."

On March 21st, 1912, a member stated in the Reichstag: "I have in my portfolio quite a number of decisions obtained from the Imperial Insurance Office by the representative of the Christian Miners' Union." The material thus furnished is publicly made use of and individual cases are discussed for weeks at a time without any one being in a position to investigate the correctness of the statements which have been given out. Under these conditions, there is only one way of obtaining a true insight into the meaning of these occurrences which party politics and party intrigues help to make obscure: One must resort as far as possible to the medical publications.

CHAPTER I.

MEDICAL LITERATURE.

I thoroughly realize that herein I touch upon a subject which only a physician can fully understand and pass judgment upon. But political economists can no longer ignore or hastily pass over the enormous mass of material that has been assembled by the "other faculty." Physicians nowadays play such an important role in German social legislation that some economic problems cannot be discussed at all without considering the medical publications on the subject.

The doctors were the ones who first called attention to the seamy side of German workingmen's insurance legislation. To be sure, where any attention at all was paid to such skeptics, they were sharply called to account. It was then still the period when every one who ventured to inquire into the meaning of the sacred syllables, "workingmen's insurance," endangered his reputation.

The medical critics made only slow progress. At the International Congress held in Berlin in 1890, general uncertainty concerning this question was still prevalent. For this reason the Congress for Internal Diseases made it one of the subjects to be discussed at its meeting in 1893. Strümpell's report (1) especially excited the minds of those present without, however, shedding

(1) Berliner klin. Wochenschr., 1893, No. 21, p. 505 (short report).

much light. Two years later Strümpell published an article (1) in which he stoutly maintained that "covetous ideas" played an important part in workingmen's insurance. The desire to attain a pension as a sequence to an accident often completely domineered the insured and caused the appearance of a nervous disease.

One would almost like to say that the most characteristic and effective feature of this publication was to be found in the fact that, six years previously, in an article on "traumatic hysteria"(2), Strümpell had taken an entirely opposite position. This literary prelude(3), which was bitterly fought over from 1888

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(1) "Ueber die Untersuchung, Beurteilung und Behandlung von Unfallkranken Praktische Bemerkungen. Munich, 1895.

(2) "Uber Traumatische Hysterie." Münch, med. Wochenschr., 1889, p. 189, et seq.

(3) Between 1889 and 1896 appeared in particular the following publications:

1889

Oppenheim: Die Traumatische Neurose.

Strümpell: Ueber Traumatische Hysterie. Münch, med. Wochenschr., 1889, p. 189 et seq.

Seeligmüller: Zur Frage der Simulation usw. Zentralbl. f. Neurol. 1889 No. 20.

Löwenfeld: Kritisches und Kasuistisches zur Lehre von den sogenannten traumatischen Neurosen Münchner med. Wochenschr., 1889, No. 38.

1890

Verhandlungen des X. Internationalen Medizinischen Kongresses.

J. Hofmann: Erfahrungen über traumatische Neurose. Berliner klin. Wochenschr., 1890 No. 29 p. 655 et seq.

Seeligmüller: Die Errichtung von Unfallkrankenhänsern. Leipzig 1890.

1891

F. Schultze: Ueber Neurosen und Neuropsychen nach Thauma. Samml. klin. Vorträge N. F. No. 14 1891.

Albin Hoffmann: Die traumatische Neurose und das Unfallversicherungsgesetz. Samml. klin. Vorträge N. F. No. 17, 1891.

Hönig: Simulation und Uebertreibung der Unfallverletzen.

Oppenheim: Weitere Mittheilungen in bezug auf die traumatischen Neurosen mit besonderer Berücksichtigung der Simulationsfrage.

1892

Oppenheim: Die traumatische Neurose. 2nd Edition. Berlin, 1892.

1893

XII Kongress für innere Medizin, insbesondere die Referate von Strümpell und Wernicke.

1894

Lauenstein: Beitrage zur Frage der Erwerbsfahigkeit von Personen. behaftet mit körperlichen Schäden und Verletzungsfolgen.

Jahrb. der Hamburger Staatskrankenanstalten. Hamburg, 1893-94 IV, p. 573.

1895

Strümpell: Ueber die Untersuchung, Beurteilung und Behandlung von Unfallkranken Münchener med. Wochenschr., 1895, No. 49-50.

1896

Oppenheim: Der Fall N. ein weiterer Beitrag zur Lehre von den traumatischen Neurosen.

Bernstein: Ueber eine besondere Form der Neurose bei Unfallverletzten Ärzl. Sachverst-Ztg. 1896 S. 1.

to 1896, and which, in part, took the form of bitter personal controversies, clearly indicates what difficult problems the physicians were called upon to solve as a consequence of the new workingmen's insurance legislation, and with what uncertainty the foremost physicians approached the problem.

As Oppenheim wrote in the spring of 1896: "The present condition of affairs is untenable, inasmuch as, according to the present status of medical science, two medical reports, arriving at directly opposite conclusions, would both appear justifiable."

That suggestion of the desirability of collecting new material yielded good fruits, and caused the appearance of a mass of publications in the following years.

The publication, in the fall of 1896, of Dr. Alfred Sanger's valuable experiences made a deep impression. On Eisenlohr's hint, he had devoted himself, from 1888 on, to the study of nervous diseases caused by accidents, and, from 1891 on, had made his observations in the general hospital at Hamburg St. Georg. For purposes of comparison he was able also to make use of the results of important investigations carried on by another Hamburg physician, Dr. Lauenstein, and as a result wrote an epoch-making work concerning the new and difficult problem.

Generally speaking, the joint work of psychiatrists and surgeons was unusually rich in results. In surgery, investigations required in accident cases as to the time of healing led to a revision of the opinions previously advanced.

After the publishing of Sanger's work, there appeared to be quite a lull in the medical publications.(1) In reality, however,

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(1) No noteworthy 1897 publication.

1898

Bruns: Unfallneurosen. Enzyklopädische Jahrbücher. VIII 1898.
Thiem: Handbuch der Unfallkrankungen. Stuttgart 1898.

1899

Sachs u. Freund: Die Erkrankungen des Nervensystems nach Unfällen. Berlin, 1899.

1900

Seiffer: Schädliche Suggestion bei Unfallnervenkranken. Berliner klin. Wochenschr. 1900 No. 37.
Edinger u. Auerbach: Unfallnervenkrankheiten. Eulensburgs. Realenzykl. Vol. XXV 1900.
Levy: Zur Lehre von den traumatischen Neurosen. Berliner Klinik. Vol. XVII, 1900 p. 205.

Bogatsch: Ueber die Ausgleichung schwerer Unfallfolgen usw. Wissenschaftl. Mitteil. d. Bresl. Inst. f. Unfallverletzte Breslau 1896.
Leppmann: Der Kampf. um die traumatische Neurose Ärzt. Sachverst-Ztg. 1896 No. 9.
Fürstner: Einige Erkrankungen des Nervensystems nach Unfaellen. Neurol. Zentralblatt 1896 No. 20.
Sänger: Die Beurteilung der Nervenkrankungen nach Unfall. Stuttgart 1896.
Dittmer: Ueber Schulterverletzungen mit Bezug auf das Unfallsversicherungsgesetz. Archiv für Unfallheilkunde, Gewerbehygiene und Gewerbekrankheiten, p. 177 et seq.

the temporary decrease in the number of publications denoted merely a change in the trend of thought.

Up to this time, the physicians had for the most part concentrated their research work on the symptoms of the disease. Now, however, they began to go back to its causes, and soon the social-polity institutions became the target of medical criticism.

As marking the beginning of this new point of view, from the physician's standpoint, is to be noted an article by Auerbach which appeared in 1901 in the "Deutsche medizinische Wochenschrift," and which bore the significant title of "The Reform of Accident Insurance Legislation."

In the following year the number of publications increased. Almost everyone contended that a reform of the laws was necessary in the interests of the general public, and in 1905 the celebrated scholar Quincke of Kiel gave vigorous expression to this feeling.(1)

The influence of his words was very great; and consequently the peripatetic Congress of the South-West German Neurologists and Alienists decided to include in their order of business a discussion of "the clinical consequences of accident insurance legislation." The selection of this subject of itself attracted attention, inasmuch as the title seemed to assume as a matter of course that accident insurance legislation had a direct influence on the form of diseases. Not only did Hoche, the chairman of the meeting,

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(1) Between 1901 and 1905 the most important publications were:

1901

Auerbach: Zur Reform der Unfallversicherungsgesetzgebung. Deutsche med. Wochenschr. 1901 No. 3 p. 42 et seq.

Sanger: Ueber die nervösen Folgezustande usw. Monats schr. f. Psychiatr. u. Neurol. Vol. X No. 3.

Stern: Traumatische Neurose und Simulation. Brannschweig 1901.

1902

Auerbach: Behandlung der funktionellen Neurosen. Berliner Klinik.

Bruns: Die traumatischen Neurosen, Nothnagels spez. Path. u. Ther. Vol. XII, 1st Part, 4th Div.

Eschle: Das Arbeitssanatorium München.

Frey: Ueber Traumatische Neurosen. Vierteljahrschr. f. gericht. Med. 3rd series. Vol. XXIII Suppl. 1902

Knotz: Zur Frage der traumatischen Neurose. Aerztl. Sachverst.-Ztg. 1902 No. 8.

1903

Strauss: Zur Arbeitserziehung Unfallverletzter. Med. Reform 1903 No. 2.

1904

Biss: Beitrage aus der Proxis zur Frage der traumatischen Neurosen. Aertzl. Sachverst. Ztg. 1904 No. 13.

Pietrzikowski: Die Begutachtung der Unfallverletzten.

1905

Schuster: Die tramatischen Neurosen. Deutsche Klinik. Vol. VI div. 1.

Windscheid: Der Arzt als Begutachter auf dem Gebiete der Unfall-u.

Inval: Vers. Jena 1905.

Quincke: Ueber den Einfluss der sozialen Gesetze auf den Charakter.

agree with Quincke, but the discussion and the numerous incidental papers yielded fresh material on the subject of "pension hysteria," "pension neurasthenia" and "pension hypochondria." Almost all of them confirmed Quincke's views throughout.(1) If

(1)

1906

Hellpoch: Unfallneurosen und Berufsfrende. Neurol. Zentralbl. 1906 No. 13.

Feilchenfeld: Ueber Rentenhysterie. Aerztl. Sachverst. Ztg. 1906 No. 16.

Aerztliche Sachverständigenzeitung: Die Behandlung schwerer Unfallfolgen. Mit Aeusserungen von Bruns (Hannover), Eulenburg, F. Schultze (Bonn), Moebius (Leipzig), Gaupp (Munich), Bernhardt, Schuster, Weigandt (Würzburg), Fauser (Stuttgart), Boettiger (Hamburg), Seiffer, Mincke, Remak, Unverricht, Binswanger, Windscheid, Steiner (Cologne), Edinger (Frankfort-on-the-Main), Hoffman (Dusseldorf), Freund (Breslau), Sachs, Mann, Schuchardt (Rostock), Nonne (Hamburg), Sänger, Haenel (Dresden), Ziehen, Doellcken.

Doellcken: Wann sind Unfallneurosen Heilbar? Neurol. Zentralbl. 1906 No. 23.

Merzbacher: Statistische Bemerkungen ueber Unfallneurosen. Zentralbl. f. Nervenheilk. u. Psychiatr. 1906 p. 905.

1907

Wanderversammlung der südwest deutschen Neurologen und Irrenaerzte.

Hoche: Notwendige Reformen der Unfallversicherungsgesetzgebung. Samml. Zwangl. Abhandlung aus d. Gebiete d. Nerven u. Geisteskrankh. Vol. VII. No. 8 Halle A. S.

Liniger: Oberschenkelbruch und Unfallversicherung. Archiv f. Orthopädie usw. p. 99 et seq.

Lissauer: Ueber Rentenneurasthenie. Aerztl. Sachverst. Ztg. VIII. No. 18.

Müller: Ueber tramatische Neurose. Zeitschr. f. d. ges. Versicherungswissensch. Book 2.

Braun: Praktische Erfahrungen ueber die traumatische Neurose. Prager med. Wochenschrift. April.

1908

Ewald: Die traumatischen Neurosen u. die Unfallgesetzgebung. Med. Klinik 1908 12th Supplement.

Fröhlich: Zur Begutachtung der nervosen Unfallkranken Zeitschr. f. Bahn u. Bahnaerzte 1908 No. 12.

Hoffa: Welche Nachteile haben sich bei der Durchfuhrung der Unfallversicherungsgesetze ergeben? Zeitschr. f. d. ges. Versicherungswissensch. 1908 Vol. VIII No. 1.

Möller: Simulation in der Unfallversicherung.

Hellpoch: Rentenhysterie: Zeitschr. f. d. ges. Versicherungswissensch. Vol. VIII No. 2.

Schonfeld: Traumatische Hypochrondric oder Rentenhypochondrie. Med. Klinik 1909 No. 31.

Worbs: Zur Frage der Arbeitsbehandlung Unfallverletzter. Aerztl. Sachverst. Ztg. 1908 No. 6.

1909

Sachs: Die Unfallneurose.

Wallenberg: Traumatische Neurose.

Hoche: Handb. d. gerichtl. Psychiatric. Berlin, 1909.

Mendel: Neurasthenia Querulatoria.

1910

Hoche: Geisteskrankheit und Kultur.

Ernst Schultz: Der Kampf um die Rente.

Windscheid: Der Einfluss der Entschädigungsart auf den Verlauf der Unfallneurosen. Ztschr. für Versicherungsmedezin No. 4.

uncertainty reigned in former years, this new literature established some definite doctrines. Windscheid, under whose direction an institution had been established in Leipzig for accident patients suffering from nervous diseases, frequently led the discussions—for the last time at the International Accident Congress, which met in Rome, in May, 1909. In the same year, Sachs published an article on "accident neuroses," which contains perhaps the most interesting material of all. Schuster's "Three Lectures on the Subject of Accident Neurology" deals with particularly important phases of this problem. And Hoche, as Rector, made the serious consequences of workingmen's insurance the main subject of his address, entitled "Civilization and Diseases of the Mind."

By emphasizing this subject, Hoche caused the appearance of further articles, of which Laquer's work, "The Curableness of the Nervous Consequences of Accidents" (1912), probably occupies the first place.

CHAPTER II.

UNDESIRABLE RESULTS OF PENSION INSURANCE.

When it was first asserted that workingmen's insurance endangered the health of the people, this paradoxical statement was greeted with laughter. But soon corroborative facts were at hand.

In Hamburg, Lauenstein established the fact(1) that foreign workmen who had no right to pensions recovered more quickly under the same conditions than native workmen, "who are thor-

(1) Beitrage zur Frage der Erwerbstatigkeit. 1893-94. p. 573.

Schuster: Drei Vorträge aus dem Gebeit der Unfallneurologie.

Biss: Ueber die Hänfigkeit funktioneller Nervenkrankheiten Aertzl. Sachverst. Ztg. No. 22.

Schaller: Einige Zahlen ueber Unfallneurose.

Kühne: Die in der Versicherungsgesetzgebung wirksamen Einflüsse. Monatsschrift f. Unfallheilkunde No. 10 and 11.

Jacoby: Zur Verhütung des Entstehens von Unfallneurosen. Vierteljahrsschrift f. gericht. Medizin No. 4.

Thiem: Handbuch der Unfallkrankungen. 2nd half, 1st part, 2nd ed.

1911

Grunewald: Ueber Ampassung an Funktionsausfalle nach Unfallerkrankungen. Archiv f. Orthopadie usw. p. 7 et seq.

1912

Laquer: Die Heilbarkeit nervoser Unfallsfolgen.

Kühne: Unfallhysteriker, ihre Untersuchung und Beurteilung. III Internationaler Medizinischer Unfallkongress at Dusseldorf p. 141.

Schultze, Frierich and Stursberg: Erfahrungen üb. Neurosen nach Unfallen.

oughly imbued with the knowledge of their pension rights."(1)

As Lauenstein said: "We observe that certain of the insured are no longer as much interested as formerly in recovering as quickly as possible, and that, after a wound has been healed, the subjective troubles often continue for a comparatively long time, . . . The single and sole cause of this is the prospective attainment of a pension." On the other hand, of the non-insured injured, he says: "The striking fact common to all these cases is that, in spite of the injuries received, ability to work to full capacity is found to exist, and that the patients were receiving no pensions because not included within the provisions of the accident insurance law."

Moreover, surgeons speak of the numerous cases, in which co-operation on the part of the patients is necessary in order to effect speedy cures (especially cases of broken or dislocated limbs). Since we have had workingmen's compensation insurance, the co-operation of the injured has often been wanting. Indeed, the insured even go so far as to endeavor to thwart the success of the treatment (e. g., where ability freely to move a broken limb is sought).

Surgical literature abounds in evidence corroborative of this assertion. Thus, for example, H. Liniger, in an article which bears the descriptive title of "Thigh Fractures and Accident Insurance,"(2) wrote:

"In the case of individuals who have no expectation of a pension the best possible result is attained in the briefest time through the necessity of having to work, through the satisfaction derived from the progressive healing and through constant, voluntary exercising. . . . When it comes to those entitled to compensation, the results as regards the ability to earn a living are entirely different. The secret desire to secure the highest possible indemnity for the accident—even though it be at the expense of the employers' association or of an insurance company—is only too apt to awaken in the mind of the insured the mistaken notion that, because the accident has occurred and because the results thereof can hardly be done away with entirely, not he himself but the insurers are chiefly interested in the restoration as far as possible of former full earning capacity. The highly valuable co-operation with the treatment which we note with non-insured patients, diminishes very considerably in these cases, especially with older patients, up to entire passivity."

Grunewald complains of the fact that since we have had a system of workingmen's compensation, healing, where accom-

(1) Sanger: Die Beurteilung der Nervenerkrankungen nach Unfall. 1896, p. 61. "The sick list of the Hamburg Seaman's Hospital is recruited from countries in which the benefit of a system of social insurance legislation, with compulsory compensation of accidents, has not yet been secured."

(2) Archiv fur Orthopadie, Mechanotherapie und Unfallchirurgie. Jahrgang 1907, p. 123.

modation(1) has to be resorted to, has become very much more difficult.

"The injured man is himself aware of it and knows quite well that, although this or that part of his body is missing, he can perform just as much work as formerly. But, influenced as he is by the accident insurance law, as is well known, it very seldom occurs that he really concedes the fact."(2)

This phenomenon exerted such an influence that surgeons were compelled completely to revise the data they had previously acquired concerning the length of time needed for the healing of broken or dislocated limbs. In spite of the improvement in healing methods, the prospects of recovery became appreciably much worse. For example, Dittmer, in an article entitled "Concerning Shoulder Injuries Considered in Connection with Accident Insurance Legislation,"(3) established the fact that fractures of the collar bone had to be treated for a period of eight months. On this point he observed: "If we compare with this the prognosis to be found in the text books and if we cite Hoffa, who represents the most recent views and those recognized up to this time as the most authoritative, we find this statement made: 'As regards the time of healing, the prognosis of all fractures of the collarbone is a very favorable one. A healing is attained in from 15 to 20 days in the case of children and in from 20 to 40 days in the case of adults.'" Dittmer further cited a sentence of Bardenheuer: "A fracture of the collarbone heals—without any functional disturbance remaining—in from 15 to 20 days in the case of children, and in from 20 to 40 days in the case of adults." Dittmer then wrote: "If we are to draw a resumé, we can say that the prognosis heretofore deemed correct, but which was arrived at without considering the results in insured accident cases, has been stated entirely too favorably, both as regards the length of time required as well as in degree of healing."

Concerning shoulder blade injuries, Dittmer remarked: "Every single case cited contradicts the favorable, or relatively favorable, prognosis concerning the use of the arm, which is given in almost all the text books." Through an examination of dislocations of the bone of the upper arm, he arrives at the following conclusion: "Even where the bone has been successfully set, we are unable to find any confirmation of the generally favorable, or at least fair, prognosis stated in the text books." Finally, concerning fractures of the upper arm bone, he says: "While in the

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(1) In cases where, as the result of an accident, the use of a muscle is entirely lost, whether through being severed or through a nerve becoming paralyzed, other muscles can, under certain circumstances, be substituted for the one disabled. This method of healing is termed in surgery "accommodation."

(2) Grunewald: Ueber Anpassung an Funktionsausfalle nach Unfallerkrankungen. Archiv fur Orthopadie et cet. 1911, p. 7.

(3) Archiv fur Unfallheilkunde Gewerbehygiene und Gewerbekrankheiten for 1896, p. 177 et seq.

text books 30 to 40 days is stated to be the time needed for a successful healing, in these cases we find an approximately sufficient use of the arm occurs at the very earliest after a period of four months."

The following also coincides with these conclusions. Professor Korteweg, who is the one in Holland best acquainted with accident insurance matters, reports(1) that previous to the introduction of accident insurance legislation (before 1901), dislocations and fractures healed much more quickly in Holland than in Germany. The Dutch physicians were at that time astonished to learn how long it took in Germany for an insured workman to recover from a shoulder dislocation or a broken leg. When, however, Holland also passed an accident insurance law based on the German system, recoveries took a longer and longer time. Although methods of treatment have in the last decade particularly been very considerably improved, a much longer period has to be allowed for recoveries from dislocations and fractures.

In Austria, a physician made a comparison(2) based on railway reports of the decade before accident insurance took effect (previous to 1895) with the decade thereafter. In the first decade 0.26% of those injured became totally disabled and 1.58% semi-invalided. On the other hand, in the second decade 6.6% of those injured became totally disabled and 2.4% semi-invalided.

"But this is not the only difference to be observed between the two periods." In the first decade, "not a single person injured became unable to work or to follow his profession in consequence of a nervous ailment." But in the second decade, "in the majority of cases the only troubles existing were nervous, without any trace of bodily injury. These formed also more than half the percentage of those totally disabled; for cases of total disability caused by bodily hurts scarcely equaled 1.25%."

Professor Zingerle (Graz) also calls attention to the "more unfavorable results in the line of healing and the increasing frequency of nervous diseases coincident with the taking effect of the law."(3)

Furthermore, comparisons made between German experience on the one side and Swiss and Danish experience on the other are most instructive. In Switzerland, an effort has been made to interpose a timely barrier to pension hysteria by paying lump sum indemnities instead of pensions. And what has been accomplished thereby is that almost all nervous "consequences of acci-

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(1) "De Invloed van de Ongevallenwet op de Genezing van Traumatische Beleedigingen" in the Nederlandsch Tijdschrift voor Geneeskunde 1908 No. 21.

(2) Braun: Praktische Erfahrungen über die traumatische Neurose vor und nach der Schaffung des Ausdehnungsgetzes der Unfallversicherung. Prager med. Wochenscrift. April, 1907.

(3) Monatsschrift für Unfallheilkunde 1911, No. 9.

dents" have been done away with.(1) A similar state of affairs is reported from Denmark, where likewise a lump sum settlement is substituted for pension payments, and where Wimmer's investigation showed that 93.6% of all observed cases were cured.(2)

What a contrast that is to conditions in Germany, where an investigation carried out on the same basis by Schaller showed only 9.3% of cures!(3)

Besides these international comparisons, other facts have come to light, which arouse also the suspicion that workingmen's insurance is of itself an *agent provocateur* of nervous diseases. Thus for example, neuroses are very seldom observed after students' duels;(4) also very seldom where officers, who, ordered to a riding school, are there subject to severe accidents,(5) and equally seldom after accidents incurred in sports.(6)

CHAPTER III.

SIMULATION.

When the serious after effects of workingmen's compensation insurance were first discussed, Friedrich Schultze (of Bonn), Lenhartz, Unverricht, Blasius, and Seeligmüller asserted that simulation by the insured occurred very frequently. The especially grotesque cases of simulation were publicly made known. Naturally it was soon proposed to supplement the insurance laws with penal provisions,(7) which should prevent any misuse of the statutes.

The Swiss Federal law concerning sickness and accident insurance contains in Article 99 this provision: "Whoever obtains, or, seeks to obtain, or is helpful in obtaining, by fraudulent means, the payment of indemnities which are not really due or owing shall be turned over for punishment to the criminal judge of the Canton." Similarly, according to a provision of the criminal code, simulation can be treated as fraud in Germany. Re-

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(1) See Nageli im Korrespondenzblatt für Schweizer Aerzte 1910, No. 2.

(2) Wimmer (Kopenhagen): Die Prognose der traumatischen Hysterie und ihre Beeinflussung durch die Kapitalabfindung. Zentralblatt f. Nervenheilk. u. Psych. 1910, p. 117.

(3) Schaller: Einige Zahlen uber Unfallneurose, Rente und Kapitalabfinding. Stuttgart, 1910.

(4) Windscheid: Der Einfluss der Entschädigungsart auf den Verlauf der sogenannten Unfallneurosen. Zeitschr. f. Versicherungsmedizin 1910. Book 4.

(5) Bruns: Die traumatischen Neurosen. Nothnagel. Vol. 12, p. 23.

(6) Hoche: Notwendige Reformen der Unfall versicherungsgesetze, 1907.

(7) The chief advocate of this suggestion was Seeligmüller, whose writings are cited on another page.

cently this possibility has been made use of.(1) But, the facts hereinafter recited will show that one cannot rely on attaining any great success through resorting to criminal laws.

As far as one can speak of a prevailing opinion as regards this much debated subject,(2) the fact is generally accepted today that cases of "out and out" simulation are comparatively rare. "Something tangible," rather, is to be found at the bottom of most imaginary diseases. On the other hand, the deliberate false dating back of ailments to the time of the occurrence of an accident ("simulation of the causal connection") is said to be very frequent. From a practical standpoint, it is of decisive importance whether disorders of any kind already existed, previous to the time of the accident, or whether they are to be ascribed to the accident. As regards invalidity insurance, it is likewise important whether the illness made its first appearance a long time ago or not.

The insured, therefore, seek to so fix the date of their troubles, aches and stiff-joints, that the highest possible pension must be awarded to them. Only with great difficulty can the physician prove with certainty such simulation of the causal connection, which is often carried on with subtlety. Proof of simulation becomes "almost impossible in all those cases in which the patient asserts a previously existing complaint to have been made decidedly worse as the result of the accident." "In these cases only very seldom will one succeed in proving the bad faith of the party examined.(3)

Altogether the insured laborers find themselves in an especially "favorable" position in the domain of simulation, indeed I might almost say, in an unassailable position. Exactly those disability features, which especially affect the "working capacity" of the factory hand, are so easy to simulate that proof of deception fails.(4) This is true above all of the simulation of weakness of the movable parts of the body. Weakness in the movement of the fingers, in the arms and in the legs, and weakness of the powers of resistance cause the physicians especial trouble, and the most varied kind of examining methods have been de-

(1) Thus, for example, the periodical Die Berufsgenossenschaft in its No. 6 for 1912 speaks of two such decisions in the criminal courts. In one case, an insured workman received six weeks' imprisonment for attempted fraud, committed by acts the purpose of which was the attainment of a pension.

(2) If I may call attention to what is self-evident, all "statistical determinations" regarding the frequency with which simulation occurs, are merely tables of figures of how often cases of simulation have been detected. Inasmuch as, according to the opinion of physicians most experienced in accident practice, there are numerous cases in which the detection of simulation is either impossible or else seldom occurs (see the next following pages), one cannot properly speak of "determinations" in a strict statistical sense. President Kaufmann, of the Imperial insurance office, has disregarded this fact in his address: Licht und Schatten bei der Arbeiterversicherung, 1912, p. 12.

(3) Schuster, previously cited.

(4) Schuster, p. 14 et seq.

vised for the purpose of catching suspected patients. But, in workingmen's circles, they are equally indefatigable, and the symptoms are known by which one "reaches the goal." For example, in Upper Silesia there are experienced recipients of pensions who actually give instruction in the simulation of traumatic neurosis. And even if "instruction" is not directly imparted, conditions are such that the German workman finds everywhere an opportunity of "posting himself."

In this respect, the policlinics, where the ailing person has to wait with other injured and sick patients in an ante-room for hours at a time, appear to exercise the worst influence. "Hardly a more favorable opportunity than this could be found for the newcomer in the sphere of accident neurosis to be overwhelmed with the most dire predictions on the part of the old neurotics there present. These latter inform him concerning the peculiarities of this physician, who is favorably disposed to the workingman, and of that doctor, whom one can only impress by exhibiting the most severe symptoms, make clear to him both the agreeableness of drawing a pension as contrasted with hard daily work, and also the tricks, exaggeration and simulation needed to secure and to retain a pension."(1) Indeed, hospitals for the treatment of accidents have been termed "high schools in the art of simulation."

The foregoing explains why everyone who comes into touch with workingmen's circles finds the laborers in receipt of peculiar information, which the investigator would not have suspected them of possessing. The workmen are thoroughly familiar with "the tricks of the doctors," that is, the methods which are termed "feigned examinations" in medical literature. Thus, for example, a workman who has had some experience in these matters and who is desirous of re-producing a weakness of the legs, will not let himself be caught by the fact that the doctor is apparently making an examination of the stomach. The workman always counts on the possibility of the doctor's only making use of the positions and movements required in such examination for the purpose of informing himself concerning the strength of and the ability to move the legs.

Besides simulation of the causal connection and simulation of weakness, there is still a third sub-division, which is of especial importance in workingmen's insurance, namely, simulation of pain. Thus, for example, the strikingly excessive overburdening of the sickness societies and insurance institutions with stomach troubles and intestinal disorders, is to be explained by the fact that a subject is here involved in which the doctor has no objective criterion for determining a cure. Often only the subjective statements of the patients (disappearance of feelings of apprehension or of pain) furnish any clue.(2)

(1) Jacoby: Zur Verhutung des Ensteheus von Unfallneurosen, elsewhere cited, p. 382.

(2) Perutz. Zeitschrift fur soziale Medizin. Vol. 4, Book 1, p. 104.

It is so difficult to prove simulation of pain after an accident that Schuster, a well posted informant, made the following statement in reference thereto in the seminary for social medicine in Berlin: "For the patient, the simulation of pain is the most inviting form of simulation. It is especially inviting because it causes the least difficulty to the one being examined and because conviction of it is absolutely impossible to secure."(1)

It is easy to understand why the most astonishing occurrences should take place under these conditions. I need only recall the cases of one workman who received a pension of 50% from Berlin on account of a sensitive scar until it was accidentally discovered that the patient, "who was unable to move," was acting as a teacher of breathing exercises, and of another, who received a pension on account of inability to move the elbow joint freely, until one day the fact was established that he had vanquished the celebrated A, in a public boxing contest.(2)

When such or similar cases as these become publicly known, the canny simulator often has the laugh on his side, and the doctors are given the well meant advice to perfect their methods of examination. In giving this advice, however, one overlooks the fact that the conscientious physician has to stop at a line which nature has drawn for him, since he knows that those suffering from hyteria often react when examined exactly as those simulating. Thus Schuster warns the physicians against declaring swaying in a marked degree, accompanied by a clumsy kind of falling, to be purely simulated because "it appears too odd and grotesque and as though made to order," for the reason that the hysterical often make the same impression when they are examined. Indeed, there is hardly a symptom which cannot be observed in the hysterical just as well as in the simulators. "The most ingenious apparatuses and methods have been invented by means of which the falsity of a patient's statements are to be shown. All these methods have this drawback that they can reveal the same apparently unmasking result both in the case of the hysterical and of the simulators."(3) And it seems hardly possible for this difficulty to be overcome, because there is no sharply defined line of division between the actions of those afflicted with hysteria and of those attempting simulation, that is, between conscious and unconscious actions.

All this uncertainty prevails in a still more marked degree in those cases in which the sick person attempts to deceive by exaggeration (aggravation). The exaggeration of subjective troubles and the exaggeration of objective symptoms both cause the doctors much difficulty. In this respect, workingmen's insurance has produced some new features. Whereas the non-insured

(1) Schuster: Drei Vortrage aus dem Gebiet der Unfallneurologie, Leipzig, 1910, p. 22.
(2) Blasius, Monatsschrift fur Unfallheilkunde. Vol. 1, p. 53.
(3) Schuster, before cited, p. 22.

sick man has an eager desire to get well, this desire is diminished, if indeed not entirely done away with, in the case of the insured, by the desire to obtain a pension.

This danger is increased by the evil that the insured almost always learns the contents of the physician's reports in the course of his suit for a pension, either during the public hearing or through the judicial decision. "In these reports, he has, so to speak, the particulars of his ailment down in black and white. He is able to fortify and strengthen the positive findings, whether consciously or unconsciously, and learns from the negative findings what symptoms are lacking for the attainment of a neurosis."(1)

Finally, to these varied forms of simulation and aggravation, are to be added all those cases in which the ailing party, through worrying about his pension, "imposes on himself an accident neurasthenia,"(2) without one being able to say to what extent he was consciously aware of it. Naturally the physician will in such an instance reserve his opinion entirely, for, "where there is brooding over the results of an accident, no one is in a position to decide at what point bad-faith began."(3)

CHAPTER IV.

PENSION MANIA AND ITS WIDESPREAD DISSEMINATION.

The more closely physicians studied the vanishing boundary between hysteria and simulation and the greater grew the amount of material collected, the more pronounced became the conviction that a much greater importance was attributable to nervous "pension sick cases" than to cases of simulation; and today one no longer doubts that a danger is to be found in the spread of these hysterical, neurasthenic and hypochondriac symptoms.

"The now well-known course is that after an accident, which can be as small and unimportant as one likes, nervous troubles of the most varied kind appear, joined with a hypochondriac ill-temper, which makes the one afflicted incapable of work, and, at the same time, secures for him, under the law, the right of draw-

(1) The Imperial Insurance Office has decided that all those portions of the reports are to be given out to the parties "on which the court rendering the decision laid stress and which had to be made use of in drawing up the decision." On the other hand, paragraphs need not be imparted which "contain information of a disturbing nature for the insured, and the imparting of which is, as a matter of fact, unnecessary." Among physicians scarcely any difference of opinion exists that the imparting of the contents of medical reports to the nervously sick ought to be suppressed. To the extent that this should not prove practicable, the physicians demand that the extracts from the reports should be prepared by physicians and not by jurists.

(2) Strümpell.

(3) Hoche. Notwendige Reformen der Unfallversicherungsgesetze, p. 16.

ing a pension measured according to his condition. Simulation and intentional deception regarding non-existent ills are not in question, as was originally supposed. The individuals are really ill, but, strange to say, they would be well if the law were not in existence. The inner connection here is this: The fact of being insured and having the right to draw a pension and even more (what helps to reinforce the suggestive effect) the talk of wives and comrades direct the attention in hypochondriac fashion to the state of the body, so that the educational factor of necessity is done away with as well as the—for nervous individuals—curative and needed obligation of pulling themselves together and of overcoming small ailments by ignoring them."(1)

In the foregoing, Hoche speaks of a disease which is caused by the law. This sounds paradoxical; but its confirmation is to be found in the recent Dutch literature on the subject, in which the physicians expressly differentiate between an "accident-law neurosis" and an "accident neurosis."(2) Not only does this disease occur as a result of accident insurance, but also "exactly similar conditions are to be found in the case of persons who seek or have received pensions under the invalidity pension law."(3)

The accident insurance law and its results occupies a more prominent place in the discussion because the comparatively higher pensions in this branch prove a more attractive "enticement." The accident results also occupy a more prominent place in medical publications because the observation of these disabilities has given rise to animated professional controversies.

This question of the results of insurance laws becomes peculiarly acute through the fact that what affects the individual most of all in this matter, namely his bodily state of health, is brought into direct contact with the great political agitation of our day. A sociologist has recently stated that the modern state is about to be metamorphosed into an "insurance community" and that this occurrence could be seen to be in response to the demands of the age. This is not the place to speak of the dangerous error contained in that alluring idea. But it is certainly a fascinating idea, and, when bluntly expressed, eminently suited to fire the masses. Every parliamentary session at which workingmen's insurance is discussed, every electoral campaign, every discussion of these questions in the workingmen's meetings proves the truth of this assertion.

Thus the workman, who really only desired to have his trouble cured, learns that this purely personal matter has become a topic of public discussion of the utmost importance. Through public social-polity debates, he is informed that he is in danger of being

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(1) Hoche, Geisteskrankheit und Kultur, p. 25 et seq.

(2) The "accident-law neurosis" is differentiated, for example, from the "accident neurosis" in the Nederlandsch Tijdschrift voor Geneeskunde, of August 20th, 1910.

(3) Sachs, cited elsewhere, at p. 42.

cheated. From the speeches of his parliamentary representatives, he learns that the judicial decisions of the Imperial Insurance Office "have grown steadily worse," that "an absolutely unlawful suppression of pensions" is taking place and that the highest court of appeals in workingmen's insurance matters has been guilty of "an infringement of the law."(1)

Such communications and assertions are then spread widecast by the labor press as proven facts, and the workmen are thereby constantly more convinced that they are being deprived of their lawful rights and that it is simply a justifiable form of defense, if, through all sorts of ways and means, they manage to "exert some sort of influence" when it comes to the determination of their pensions.

Imbued with this conviction, the workmen turn to pettifogging lawyers, the so-called "people's attorneys," who offer their services on every hand in boastful newspaper advertisements.

These first of all call to the attention of those seeking advice the fact that they have to pay "the people's attorney" a fee, because in all other respects the various proceedings in a suit, including the different forms of appeals, can be carried on entirely free of charge.(2)

For years past, medical publications have been full of complaints of what a pernicious influence is being exerted by these pettifogging lawyers (also by the secretaries of the workingmen's organizations), of how they stimulate the mania for litigation and simulation and how they "suggest" the pension mania to the laborer's mind.(3) Thus the physicians call attention to the fact that the workmen, who generally have their applications prepared by these pettifogging lawyers, are "spurred on." It is "explained to them that it is the solemn duty and obligation of the state to pay a handsome indemnity." At the same time, these shyster lawyers often proceed with considerable unscrupulousness and write down the subjective statements of the insured "without looking into the documents in the case or the individual's mental qualities." It often appears that the workman was satisfied with the pension allotted him, but was driven by his "lawyer into bringing a suit, in which event everything depended on appearing as ailing as possible."

These influences, which no kind of legislation can do away with and which are becoming constantly more effective and more threatening the more "the modern state is changed into an insurance community," are unavoidably reinforced by the incitement exerted by the sick man's surroundings. "It is natural for

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(1) One should read the Reichstag debates on the Imperial Insurance Office budget, especially the debate of March 21st, 1912.

(2) See chapter 5 concerning appeals free of charge.

(3) In order to quote only a few, compare for example the writings already cited of Sänger (p. 51), Jacoby (p. 381), Laquer (p. 8), Kuhne (p. 400).

relatives and friends, belonging to the same grade of society as the insured and imbued with the same views, to aid him in his struggle for a pension and not to weaken but rather to strengthen his morbid ideas. In the opinion of almost all writers, the women are the strongest impelling force; friends and relatives engage in a sort of officious competition to depict to the injured man in as severe a light as possible the results of an accident."(1) Consequently "he watches himself day and night, every ache, every weakness and every attack of dizziness is noted, highly colored and magnified."(2). The insured "devote their whole attention to the state of their bodies and to the symptoms of their illness. . . . Their morbidly increased powers of imagination cause them to depict their ailments in the very darkest, and the longed for period when they are to be recipients of a pension in the very rosiest colors." They devote "an extraordinary amount of attention to the peculiar symptoms of and to what takes place in their own bodies. Whatever appears as not quite normal, and to which the attention of the insured was in many cases first directed at the time of the physician's examination, is thereafter dwelt upon as the symptom of a diseased condition. Indeed, a hypochondriac use is made of quite normal physiological occurrences, which in some way or another have come to the knowledge of the patient."

Generally all this is unconsciously evolved; and the fact cannot be too strongly emphasized that the insured is far from starting with the idea of exploiting the accident that has befallen him. Of course, this excuses the individual; but the social danger is thereby just the more increased. For the individual is influenced by the general trend of thought, which has spread in every direction among the people and which one of those best acquainted with this phase has described as follows:

"Through the results of social insurance legislation visible on every hand and particularly through the receipt of money payments, the suits to enforce employers' liability and the extension of private accident insurance companies, the belief in the right to compensation has become a living doctrine among the people. Especially general has become the idea that the occurrence of an accident carries with it the right to compensation; that the injured party has the right to the highest possible compensation; that every reduction of an indemnity is an act of injustice on the part of the employers' association; and that plenty of money is available but that the employers, who constitute the members of the associations, simply do not wish to pay. On the one hand, there is the poor and injured victim undergoing pain and misery and, on the other hand, the wealthy factory owners who are included in the employers' associations. These are the things which exercise a controlling influence on the individual's line of thought and which cause him to act, without serious reflection, in accordance

(1) Jacoby, cited elsewhere, p. 381.
(2) Hellpach, Rentenhysterie, p. 276.

with what he himself has come to believe to be the definitely accepted doctrine derived from general experience."(1)

Political economists have probably paid little attention to the social danger herein contained, because ostensibly it has been "statistically proven" that traumatic neurosis—the best known form of "pension hysteria"—only very seldom occurs.

In 1904, Dr. Paul Biss published "Contributions Based on Practical Experience of the Question of Traumatic Neurosis,"(2) which he supplemented by an article appearing in 1910.(3)

In his article Biss communicates the following results. He found:

1. Only 24 instances of accident neurosis among 9,000 accident cases in the Seamen's Employers' Association.
2. Only 7 instances of accident neurosis among 21,000 accident cases in the Private Railways Employers' Association.
3. Only 12 instances of accident neurosis among 19,800 accident cases in Section 3 of the Chemical Industry.
4. No instance of accident neurosis in from "6,000-7,000" accident cases of the North-West Iron and Steel Employers' Association.
5. Only 14 instances of accident neurosis among about 16,000 accident cases in the Warehousing Employers' Association.

In 1906, Dr. L. Merzbacher published(4) "Some Statistical Observations concerning Accident Neuroses," wherein the following conclusion was set out:

Only 13 instances of accident neurosis among 85,000 accident cases in the Iron and Steel Employers' Association.

Finally, in 1912, Dr. Hugo Stursberg stated that only 24 instances of accident neurosis were to be found among 14,529 accident cases in the Rhenish-Westphalian Building Employers' Association.(5)

Attention has already been called by physicians to a defect in the manner of obtaining these statistics. The conception of what constitutes an accident neurosis has been drawn along very narrow lines so that the commonest forms are just those which are disregarded. However, before I take up this point, I would like to analyze the fundamental suppositions on which these statistics are based and the reliability of the methods resorted to.

Merzbacher's system was the following. He was given the cards relating to the accidents that had occurred from 1886 to 1898, in Section 4 of the Iron and Steel Employers' Association (with headquarters at Mannheim). There were 1,370 cards in all.

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(1) Sachs: Die Unfallneurose, p. 41.
(2) Aerztl. Sachverst: Ztg. for 1904, p. 257 et seq.
(3) Aerztl. Sachverst: Ztg. for 1910, p. 450 et seq.
(4) Zentralbl. f. Nervenheilk. u. Psych. 1906, p. 905 et seq.
(5) Schultze und Stursberg, "Erfahrungen uber Neurosen nach Unfallen," at p. 4.

The material therein contained, which was gathered by laymen and stated in brief form in accordance with the official requirements, consisted of the usual notices concerning the individuals affected, the kind of accident incurred, the nature of the injury, the amount of the pension granted and the length of time the treatment lasted.

As he himself states, Merzbacher then determined "by a quick glance through the record cards" the number of cases which he thought ought to be taken into account. The examination of the material, that is, the selection of the cases of interest, took only a few hours.

In this "quick glance through the record cards," he relied entirely on "experience" for his standard of measurement.

"By a little experience, which one is able to acquire in a short time, it becomes possible to draw conclusions from the degree of injury suffered as to the amount of the pension which may be expected. Thus it is soon learned how high is usually the pension of a man who has lost either a hand, an arm or an eye through an accident. In these cases, one encounters figures which are always repeating themselves. The amount of the pension, as expressed in percentages, is the same in individual cases, and it remains year in and year out the same in the examples we have cited, that is, in cases of the loss of a limb or of an organ of the body. A gradual decrease in the amount of the pension in certain traumas, which is to be regarded as something quite natural and lawful, is ground for our setting the cases to one side as no longer worthy of remark. A disparity between the degree of injury received and the amount of pension granted, a steady increase in an originally small pension, pensions for full disability after unimportant injuries and occurrences of a similar nature will at once attract our attention, indicating that some complication has arisen and will make the case seem of importance for the purposes of our inquiry."

If one stops to consider that a branch of disease is here involved about the nature of which the greatest uncertainty prevails among doctors, one cannot help being astonished that simply "by a hasty glance through the record cards" (which have been prepared by laymen) an "accurate determination of facts" should have been arrived at, which, in actual practice, in spite of the most careful examination and observation of patients can only rarely be established with absolute certainty.(1)

Even more flimsily put together are the "statistics" of Biss, who has expressed himself obscurely concerning his methods. Manifestly he did not himself look over the greater part of the record cards, but left this to the officials of the employers' asso-

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(1) Concerning the uncertainty which prevails solely in the domain of accident neuroses, see the next following page but one.

ciation, that is, to laymen.(1) Finally, Stursberg confined himself to the remark that "he had succeeded in having the papers examined of 1,241 of those injured who were still drawing their pensions in 1906." Accordingly the methods followed in these statistical examinations have been of such uncertain value, that, from a statistical standpoint alone, the results of these tabulations can hardly be accepted as controlling.

But in addition to this, it appears that, in the judgment of physicians, the method of interrogation followed was faulty and bound to give erroneous results. On this point, Dr. Alfred Jacoby writes:(2)

"In considering only cases arising after severe injuries or after severe physical shock, Biss has adopted a very narrow construction of the expression accident neurosis. Just those neuroses which gradually develop and are based on imaginary notions, affections and suggested ideas, seem to be the most frequent and constitute the kind which, comparatively speaking, can be most easily prevented."

Dr. Leopold Laquer writes:(3)

"In all these statistics (of Biss and Merzbacher), which appear to operate against Hoche's point of view, the often repeated and characteristic disease form of an accident neurosis is meant, or in other words, the universally psychologically caused psychoneurosis with its complexity of symptoms, while the thousand varieties of local nervous symptoms which, Strumpell first desired to have termed "local traumatic neurosis," are not included in these figures. The localized morbid sensitiveness and state of weakness, which delay the recovery of accident patients—even in the case of slight distortions—for days, indeed for years, are suffi-

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(1) Thus Biss wrote in 1904: "I am informed by the Private Railways Employers' Association that among the 21,783 accidents which were reported between the years 1889 to 1903, about 1,600 gave rise to the payment of indemnities. Among these last, 7 cases had been discovered in which relatively unimportant injuries, which specifically had passed off without any severe bodily shock, had caused nervous disturbances which were still existent and which the physicians termed functional disturbances."

In 1910, Biss wrote: "Section 3 of the Employers' Association for the Chemical Industry was able to put at my disposal only 12 of such cases out of 2,670 indemnified accidents." I believe that I can conclude only that Biss left the examination of these cards to the officials of the employers' association not only because of the sentence just quoted, but also because in another instance, in the case of Section 4 of the North-West Iron and Steel Employers' Association, he expressly mentions that "he had been able, with the kind assistance of the manager, himself to look through all those reports, which seemed to come into question according to the synopsis entered in the index book." As he especially emphasizes, in only one instance (in the case of Section 4 of the Warehousemen's Employers' Association) Biss "personally examined the entire set of reports, about 2,700 in number, relating to still pending cases."

(2) Jacoby, cited elsewhere, at p. 366.

(3) Die Heilbarkeit nervöser Unfallfolgen, Halle, 1912, p. 13.

ciently well known to all surgeons and indeed to every sickness society physician."

After these not very encouraging attempts the proposal was made to have made an examination according to a uniform system, and covering a period of from 10 to 20 years, of the reports of cases of several of the larger employers' associations, with branches all over Germany, in order to obtain reliable data relative to the exact frequency and the increase and decrease of cases of neurosis. Such repeated tabulations were demanded as "the indispensable prerequisites to the introduction of preventive measures and to a test of the efficacy."(1)

However valuable a really reliable determination of the above facts would be, its realization appears improbable. At the very outset, the point at which such tabulations should be begun is quite uncertain; for the medical authorities are far from being of uniform opinion concerning the nature of accident neurosis.

One may still regard a traumatic neurosis to be a peculiar nervous disease of a certain category, while others assume sometimes hysterical and sometimes neurasthenic symptoms, to be ascribed either to the accident or to the fact of being insured. It is possible to judge from Biss' statistics what an effect these differences of opinion would have on the statistical tabulations.(2)

In daily practice this state of uncertainty is actually multiplied, because usually several causes work together in producing the disease.(3) How uncertain is medical practice on this particular subject of accident neurosis is strongly expressed in a statement of Laquer, the Frankfort physician for nervous ailments: "The same obligatory course is pursued in the determination of a pension both in the case of simple and of complex accident neurosis. An old judge of cases of accident neurosis once jokingly said: 'In the even years, the pensions are increased and in the uneven years they are decreased.' Medical examiner and judge are changed and with them the opinion as to the cause of the invalidity incurred, especially as the number of workmen and above all that of unskilled workmen who have a fixed abode varies frequently."(4) The opinions of physicians in active prac-

(1) Jacoby, before cited, at p. 367.

(2) See Laquer's criticism above.

(3) In this connection, the following remarks of Ernst Schultze may be of interest, because they show how far some physicians go in their efforts to arrive at "accurate" results. ("Der Kampf um die Rente und der Selbst-mord in der Rechtsprechung des Reichsversicherungsamtes," Halle, 1910, p. 29 et seq): "But it is not possible for me to imagine how then one can indicate how far the loss in earning capacity caused by the neurosis is to be ascribed to the accident and how far the struggle to obtain a pension is to be held responsible therefor. . . . And my skepticism has not vanished since in some medical reports I have seen this influence measured in absolutely exact figures. One ought not to forget that in many cases of traumatic neurosis the estimation of the degree of working capacity is more or less a matter of individual sentiment."

(4) Laquer, before cited, p. 111.

tice are so diametrically opposed to one another that Ernst Schultze was able to write: "Recently I have been repeatedly warned against sending those injured in accidents to a neurologist or to a psychologist to be reported upon. As I discovered in looking over the medical documents, an expert warned not long ago against sending a sick patient who had met with a severe railway accident to a neurologist for examination, as in that event he would develop a case of traumatic neurosis."(1)

Therefore some physicians have long pleaded to have the conception of traumatic neurosis eliminated from medical science, inasmuch as the disease pictured by Oppenheim did not exist in a universal form. Rather many forms of disease were involved, so that no one could determine with certainty where the line was to be drawn between the immediate consequences of an accident, the effects of the "struggle for a pension," hysteria and neurasthenia.

Finally, if it be desired to observe the undesirable consequences of workingmen's insurance and the struggle for a pension in their complete extent, one should not overlook the fact that statistics of "accident neuroses" cover only a portion of the whole field of pension mania.(2) What the surgeons have established concerning a diminution in the chances of recovery is only in rare cases to be included under the designation of "neurosis."(3) The phenomena of sickness and invalidity insurance. which are of great moment in daily practice are likewise to be placed in a category by themselves.

Especially is this true of the burdening of sickness societies and insurance institutions with those suffering from stomach and intestinal disorders. Perutz, who made an investigation concerning the extent to which the sickness societies were burdened with digestive troubles and those relating to the non-assimilation of food, thus called attention to the fact that the percentage of those suffering from stomach troubles is strikingly high in the building trade. As to this he remarks: "But I think that we would do wrong if we assumed this to represent in any way an occupational disease or as being due to the misuse of stimulants. It is more probable to assume that unemployment, which is so prevalent in the building trades in winter, leads to an increased inclination on the part of those insured to report themselves as disabled on account of slight ailments."(4)

Schallmayer also calls attention to the fact that sickness in-

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(1) Ernst Schultze, ante, p. 42.

(2) In his address "Licht und Schatten beider Deutschen Arbeiter Versicherung," President Kaufmann of the Imperial Insurance Office makes the mistake of not taking this fact into consideration and thus arrives at erroneous conclusions.

(3) Concerning the surgeon's experience, see ante.

(4) Perutz, cited ante. Zeitschrift für Soziale Medizin, etc., Vol. IV, Book 1, p. 104.

surance "is frequently made use of as a way of insurance against unemployment."(1)

If statistical data is to be taken into consideration at all, one should not forget that almost every disease can be influenced by the attitude of the patient. Just as soon as the struggle for a pension comes into play, the sick man is obliged "to nourish all his symptoms for as long a time and in as acute a form as possible." If his condition is adjudged to be favorable, he regards such report with malignity and distrust. Thus is the confidential relation between himself and his physician completely destroyed.(2)

Thus also is the ground prepared for what has been termed "psychical infection." From our studies concerning the psychology of the masses we know that the spread of unsound ideas in epidemic fashion is helped especially by the loss of the individual's sense of responsibility.(3) And this is what has occurred in a very marked degree since the introduction of social insurance. "The conviction that, as a matter of right, every accident entitles the injured party, to the highest possible compensation has come to be a dogma among the people and the common property of the masses."(4) "The pension mania, which the law has called into existence, has taken such deep root in workingmen's circles . . . The pursuit of a pension is regarded as something eminently lawful"(5); and as a workingman's associates learn immediately all the particulars of a case "which has had a successful outcome," conditions are thus fufilled for inciting wide circles to imitation.

At this point, suggestion comes promptly into play and reinforces the "mental infection" to such a degree that the spreading of the pension mania has been compared to the epidemics of the mind, such as were known some centuries ago and referred to in the terms flagellants and trembleurs.(6) At the same time, the distortion of elementary ideas has gone so far that the drawing of a pension is regarded as an honor.(7)

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(1) Schallmayer: Was ist von unserem sozialen Versicherungswesen für die Erbqualitaten der Bevölkerung zu erwarten? Zeitschrift für soziale Medizin, etc., Vol III, Book 1, p. 60.

(2) Dr. F. Ritter. Oldenburg. Nachteile der sozialen Gesetze. Die Grenzboten, 69th year, No. 52.

(3) Weygandt: Beitrag zur Lehre von den psychischen Epidemien. Halle, 1905. Le Bon: Psychologic der Massen. Leipzig, 1908. Gudden. Ueber Massen. suggestion und psychische Massenepidemien. Munich, 1908.

(4) Laquer: Die Heilbarkeit nervöser Unfallfolgen, at p. 99.

(5) Ernst Schultze: Kampf um die Rente, at p. 36.

(6) On this point, compare Kühne, Ueber die in der Versicherungsgesetzgebung wirksamen ungünstigen seelischen Einflüsse. Monatsschrift für Unfallheilkunde, etc., for 1910, at p. 39 et seq. —Rigler and others in the Zeitschrift für Versicherungsmedizin for 1909, at p. 177 et seq. —Hoche: Notwendige Reformen der Unfallversicherungsgesetzgebung, 1907. —Verhandlungen auf der Wandersammlung suddeutscher Neurologen, 1907. —Especially also Sachs, Unfallneourose, 1909.

(7) Weygandt stated at the Wanderversammlung of the Southwest German Neurologists and Alienists (1907) that some of the insured had even had printed visiting cards bearing the words "recipient of a pension."

"Thus it has happened," writes Sachs, "that the disease, which the physician deemed originally as something new, peculiar and unusual, has become more and more widespread and has today become a veritable epidemic."(1)

For this reason, Quincke, who is accustomed to express himself only after carefully weighing the pros and cons, determined to utter a general warning in a striking way. He contrasted the system of universal military service with that of workingmen's insurance, and added: "If the defence of the fatherland was the immediate cause for and the ultimate object sought in the introduction of universal military service, it nevertheless has an educational influence on the individual, and especially because it teaches him to disregard discomforts, to sink his own personality and, as a member of a great entity, to seek the attainment of a common object. It diminishes egotism; while the system of accident insurance calls it forth, through the anxiety developed about one's beloved 'ego.' The system of universal military service lays stress on the performance of a duty, that of accident insurance on the right of the individual. Many decades have been required in order to have the full educational effect of the former felt on the national character; but the depraving influence of the accident insurance law is already noticeable, and will become more and more visible as the years go on."(2) And when Hoche, the celebrated psychologist, became rector of the university at Freiburg im Breisgau, and, at the beginning of his term of office, delivered an address on culture and the diseases of the mind, he expressed himself thus: "Thirty years ago it(a) was still an unknown term, today it is a disease which, as a cancer in the organism of our whole working population, is rightly a cause of grave anxiety. This people's plague not only arose after the enactment of accident insurance legislation, but is directly dependent on it. There is no doubt that the law has produced the disease. No one was able to foresee it. One is reminded of Bismarck's comparison of the state to a living organism with which one should experiment carefully."(3)

CHAPTER V.

THE DIFFICULTY OF SECURING REFORM LEGISLATION.

Representative of the Centre Party: "Gentlemen, it is also interesting to observe that the fire of the Social Democrats is always exclusively directed at the Centre . . . Gentlemen, the plot behind this is known and also the object of this manœuvre.

(1) Sachs, cited ante, at p. 42.
(2) Quincke. Der Einfluss der Sozialen Gesetze auf den charakter. Schlesische Zeitung, 1905.
(3) Hoche. Geisteskrankheit und Kulture, at p. 25.
(a) Referring to pension mania. *Translator's Note.*

The gentlemen opposite have systematically tried to discredit the Centre Party among such of the workmen as are our supporters."

Social Democratic representative: "But you, gentlemen of the Centre, wish to appear outside as the party which is friendly disposed towards the workingman. You, therefore, make a great hullabaloo over your so-called friendly attitude towards the workingman . . ." (from the Reichstag debate of March 21, 1912, on the budget of the Imperial Insurance Office.)

The difficulty of securing reform legislation is to be found in the fact that all the great parties in the Reichstag anxiously avoid doing anything which might arouse the working masses against them. As everyone knows, the "labor vote" is of decisive importance not only for the Social Democrats, but the Centre group also is in part a workingman's party. Similarly, the Progressive People's Party has to count on support from the labor element at election time; and the leader of the National Liberals gained the Reichstag with the help of the "labor vote."

As soon as a member proposes some reform, which affects workingmen's insurance matters, he runs the risk of furnishing the most effective campaign material against himself. The very day thereafter the opposition local press is filled with bitter comment, the member's words are misquoted and in the electoral campaign, the "material" is used against him anew. It is, therefore, easy to understand why reform measures do not readily obtain the support of the great parties in the Reichstag. Certainly no one will deny that abuses do exist; but there is a shibboleth handy, namely, "simplification of procedure," the purpose of which is to manifest a favorable attitude towards reform without raising any implication of unfriendliness to labor.

The Simplification of Procedure.

Irrespective of party, no one could overlook the fact that the highest court in workingmen's insurance matters is overburdened, and consequently that decisions in appeal cases were unduly delayed. Thus, for example, while originally over 63% of all appeals were decided in the same year in which they were taken, this percentage has diminished from year to year so that in 1909 only 41% of the appeals taken were decided in the same year, in 1910 only 32% and in 1911 only 22%.(1)

Moreover, it had occurred that, in the opinion of many secretaries of labor organizations, the interpretation of the law by the highest court was "more unfavorable" to the workingmen than that in vogue in the courts of next lower jurisdiction (the arbitration courts).

Under these circumstances, the great parties were able to agree that appeals (and revisions respectively) should be done

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(1) Amtliche Nachrichten des Reichsversicherungsamtes, 27th year, No. 2, p. 298, and 28th year, No. 2, p. 280.

away with in many cases in order that the Imperial Insurance Office might be freed from a considerable number of the present appeals.(1)

If now in the course of the next few years a rapid decrease should be noted in the number of appeals and revisions, one should not give one's self up to the delusion that the mania for litigation has been done away with. The changed procedure affords plenty of scope to the mania for litigation. Instead of the three stages previously existing—judgment, appeal and recourse—the three new stages of judgment, protest and appeal are to take their place and, for certain cases, recourse constitutes a fourth stage. Taking it all in all, one should not expect too much from the efforts of the Reichstag parties to simplify the methods of procedure. Despite the long drawn out, painstaking labors of experts,(2) a want of precision is still to be noticed in many places, due to the everlasting anxiety about the votes of the labor element. Consequently this legislation, which is intended to simplify methods of procedure, suffers from an uncertain backward and forward sort of revision.(3)

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(1) §1696 of the Imperial Insurance Code provides: "In the case of claims for compensation under invalidity insurance and survivors' insurance a revision is excluded if questions are involved pertaining to

1. Amount, time of beginning and time of cessation of a pension.
2. Lump sum payments.
3. Widows' pensions.
4. Orphans' dowry.
5. Judicial costs."

§1697: "A revision can only be taken on the ground that

1. The judgement excepted to is based on the non-application or on the false interpretation of the existing law or on a disregard of the plainly expressed contents of the pleadings.

§1700. "A recourse (appeal) is excluded if questions are involved pertaining to

1. Sickness treatment or treatment at home.
2. Pensions for an occupational disability, which, at the time of the decision of the court of recourse, is incontestable or, after judicial determination, has disappeared.
3. Apportionment of pensions, which in the case of permanent disability are to be granted for limited and already expired periods.
4. Treatment in sanatoriums.
5. Pensions of heirs.
6. Funeral expense money.
7. Provisional pensions.
8. New determination of permanent pensions on account of change of condition.
9. Lump sum payments.
10. Judicial costs."

(2) Graf von Westarp, member of the Reichstag, said: "We have devoted ourselves to this subject from April, 1910, until June, 1911."

(3) Thus for example, in a desire to meet the wishes of the workingmen, the Reichstag in 1900 abolished in many cases the preliminary appeal to the employers' association (§88, paragraph 3, gave to the arbitration courts the right to decide concerning "the otherwise determination" of pensions which had been paid for a period of five years). In consequence of this change, excessive demands were made on the time of the highest court and a condition of affairs brought about which in turn it is sought

The Restorative Treatment during the Waiting Period.

To the elementary methods, as I might term them, which are resorted to for the attainment of a pension there are joined the artful attempts to play one insurance branch against the other. No one can help being surprised at the circumspection and dexterity displayed in espying the places where proceedings can be successfully instituted.

This is especially true of the points where sickness insurance and accident insurance rub shoulders. Two fields of insurance work are concerned, which are governed by different financial and technical rules and yet in their actual workings come into close contact. For it is often uncertain whether the injury a workman has undergone was caused by "an accident in the course of his employment" or whether it made its appearance as the result of a "disease."(1)

In practice, however, one cannot wait to determine whether the sickness society or the accident insurance branch is to act. The statute therefore provides that the sickness society shall attend to the preliminary treatment while the employers' association shall await the outcome. The law provides for a waiting period of thirteen weeks.(2) During this waiting period, the sickness society for the purpose of reducing its financial burdens, is zealously engaged in trying to prove that the illness resulted from an accident incurred during working hours. On the other hand, as soon as the fact of an accident having occurred is established, the sickness society is not interested in watching the further progress of the case closely. This period of betwixt and between can be utilized by all those who consciously or unsciously are inclined to derive a pecuniary profit from the injury. For when the employers' association takes hold a full quarter of a year after an accident, it can seldom be determined with certainty whether certain nervous troubles existed before the accident or not. The employers' association also is no longer in a position to make use of its appliances, which make it difficult

(1) How very uncertain the courts are in determining whether an accident or the result of an illness is in question can be seen by reading the decisions which Breithaupt has collected in his excellent digest: Die Rechtsprechung des Reichsversicherungsamtes, Berlin, 1912, p. 16.

(2) For the peculiar way in which the waiting period arose, see Thiem: Handbuch der Unfallerkrankungen, Vol. 1, p. 16 et seq.

to remedy by again making the employers' association the first court of resort.

A similar vacillation appears in the regulation of the initial proceedings. Thus through §70 of the Industrial Accident Insurance Law (supplemental law of 1900) the workman was allowed to participate closely in the initial proceedings for the determination of the amount of a pension and a diminution in the number of appeals was the result. On the other hand, the Imperial Insurance Code does away with this arrangement in order to simplify the procedure.

for the injured by a system of "passive resistance" to preserve stiffness of the joints, etc.(1)

For this reason, since 1892 the employers' associations have been permitted to take over the treatment of the injured even during the waiting period.(2) The Imperial Insurance Office not only tries by circulars to induce the employers' associations to make as extended a use of this right as possible, but has also worked out a number of instructions in order to cause such associations to resort to a comprehensive and systematic method of treatment during the waiting period.(3)

Nevertheless, the sickness societies raised objections; and the often very complicated proceedings required deterred many of the employers' associations from taking any action before the end of the 13th week.(4) The Imperial Insurance Code now makes it easier for them to take hold at an earlier period. It permits the employers' associations to conclude conventions with the sickness societies whereunder the treatment of every person injured can be immediately undertaken by the employers' association. It obligates the sickness societies to make more prompt reports of accidents and allows the employers' associations to have each victim examined and to obtain information concerning his condition from the sickness societies.

Whether conditions will be appreciably improved thereby is indeed doubtful, for the gap in the system remains and makes it easy for the insured to play the sickness societies against the employers' associations. The physicians and the more experienced officials are therefore urging the entire abolition of the waiting period for the employers' associations.(5)

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(1) The Silesian Iron and Steel Employers' Association was the first to have those injured treated in a medico-mechanical way during the waiting period, although the sickness societies often caused considerable difficulties. Experience showed that in the case of arm and leg fractures "the end of the second or beginning of the third week" was the very latest time for the beginning of the treatment. In case of broken fingers, injuries to the elbow joint, severed sinews or nerves, or dislocations, the treatment has to be begun earlier, if a complete restoration is to be secured.

(2) §76c of the supplemental act to the sickness insurance law.

(3) Amtliche Nachrichten des Reichsversicherungsamts for 1911, at p. 595.

(4) Thus, for example, it was a disputable question whether the employers' associations had the right to have the injured party examined during the first thirteen weeks after the occurrence of an accident without at the same time taking over the entire treatment.

(5) The following figures (Amtliche Nachrichten des Reichsversicherungsamtes for 1912, at p. 271) show how seldom the employers' associations have thus far made use of the right to take over the restorative treatment during the waiting period.

In 1906 only 1.96 per cent. of reported accidents were taken over.
In 1907 only 1.88 per cent. of reported accidents were taken over.
In 1908 only 2.07 per cent. of reported accidents were taken over.
In 1909 only 2.40 per cent. of reported accidents were taken over.
In 1910 only 2.63 per cent. of reported accidents were taken over.

The Abolishment of Appeals Free of Cost.

If the reform of workingmen's insurance is hindered today because of electoral campaign tactics, the necessity of bringing about more efficacious reforms will become more apparent as time goes on. Heretofore the "method of procedure" in workingmen's insurance matters furnished the politicians material enough for resolutions and speeches. The subject gave opportunity for censuring the bureaucratization of social insurance, of offering to the workmen a more rapid attainment of pensions and of parading as up-to-date, well informed representatives and friends of the workingman.

But ultimately this vein will be exhausted, and the increasing abuses will compel attention in sober earnest to the propositions which physicians and experienced officials have been recommending for years past.

All these propositions have one point in common—they are annoying to the insured. They are additional safeguards by which the benefits conferred by the law are to be circumscribed.

The official statistics of the Imperial Insurance Office show that the greater part of the appeals, recourses and revisions taken are unfounded, and that the great number of legal remedies that can be resorted to, leads to an intolerable overburdening of the courts and to a serious delay in procedure.

It is very difficult to obtain an idea of the prevailing mania

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Bogatsch, who has had much experience in this matter and who in 1909 prepared a memorandum thereon for the Imperial Insurance Office, is of the opinion that a real improvement can be brought about only if the waiting period for the employers' associations be entirely done away with. "The insured," he writes, "could only profit thereby, since a uniform treatment would then be bestowed on them from the beginning and they would then more than formerly come to enjoy the advances of the last two decades in accident surgery." Monatsschr. f. Unfallheilk. 1910, No. 11 and 12, p. 315.

Also at the third International Medical Accident Congress, which was held from the 6th to the 10th of August, 1910, the speakers—especially Lohmar, of Cologne, and Frank, of Berlin,—warmly advocated an early taking over of the restorative treatment.

On the other hand, Mugdan writes: "As is well known, high hopes, especially in official circles, are based on the taking over of the restorative treatment by the employers' associations. Now it cannot by any means be denied that the taking over of the restorative treatment by the employers' associations during the time of the waiting period can be of great advantage for them and for the injured party if the injury requires a complicated course of or an expensive treatment, which is beyond the means of many of the sick patients. On the other hand, there is nothing to be gained if the employers' associations indiscriminately direct the treatment of every accident case. Not all injuries by any means heal more easily through the use of the 'intensive' system of treatment. Moreover it happens that through this treatment the feeling is aroused in a considerable number of the insured that a quicker and more efficacious method of recovery is not so much sought as a reduction in the pension rate." "Einführung in die Reichsversicherungsordnung. Addresses held between October 13th and 30th, 1911, in the seminary for social medicine." Berlin, Allgemeine Medizinische Verlagsanstalt, 1912, at p. 55.

for litigation simply from figures. Nevertheless, the following facts should be borne in mind:

In accident insurance, over 400,000 awards are rendered yearly from which the following disproportionate number of lawsuits results: In 1911 there were over 170,000 lawsuits brought (in accident cases alone).(1) In a considerable number of cases the contest was carried on through all the courts. In industrial accident cases recourse was had to the Imperial Insurance Office in 30% of all cases; and in agricultural accident insurance in almost 20% of all cases.(2) Altogether there were over 42,000 recourses pending in the Imperial Insurance Office, about half of which were left over from the previous year. Conditions are similar in invalidity insurance, where revision was demanded in 25% of all awards.

It is easy to see that a majority of the suits in question are unjustified. Of the recourses taken by the workingmen in accident insurance cases, over 80% were denied, and almost 90% of the revisions taken by the workingmen in invalidity insurance cases.(3) As has already been stated, the innovation in the Imperial Insurance Code can be of only nominal help against such a readiness, not to say wantonness, in starting suits. In reality, there is only one means of bringing about a change, namely, to stop the allowance of appeals and recourse proceedings free of charge. Undoubtedly it will be objected that such a step is unsocial. Nevertheless, the opinion is gaining ground that one does the workingman himself a poor service if one makes it easy for him to start litigation in insurance matters. In the course of time, the first indications of a coming change of methods have become noticeable.(4) Even the Social Democratic Party gave

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(1) The number "of contested cases of the arbitration courts awaiting determination" was 130,373 in 1911 and the number "of recourses awaiting determination" was 42,120. Cf. Amtliche Nachrichten des Reichsversicherungsamtes for 1912 at pp. 272 and 274.

(2) For every 100 appealable decisions of the arbitration courts the number of recourses taken was 30.34 and 18.36 respectively.

(3) To be exact: 82.4% of recourses and 88.49% of revisions.

(4) Thus the ordinance of November 22nd, 1900, concerning the procedure of the arbitration courts for workingmen's insurance, provided in §20, Par. 3: "The chairman of the arbitration board can impose on those immediately concerned such of the costs of the proceedings as have been wantonly incurred or caused by an attitude intended to deceive or to cause delay."

And §21: "Without a motion being required therefor, the arbitration court, at the time of the decision of the main question involved, must look into the matter whether and to what extent the losing party has to make good the costs incurred by the opposing party in the proceeding before the arbitration court."

The Imperial Insurance Code now contains a similar provision. In §1802: "If one of the parties interested has through wanton misbehavior, by improper delay or through misleading statements, caused costs to be incurred in the proceeding, the insurance bodies can impose these costs on him either wholly or in part."

its consent to costs being imposed on the workingman in certain cases(1), and the Imperial Insurance Code provides that the Insurance Office must hear the testimony of a physician proposed by the workman if the latter "pays the costs therefor in advance."(2)

Thus the old principle of freedom of cost has been infringed upon. If formerly every form of charge in accident or invalidity insurance was rejected as unsocial, it is now gradually being realized that, under certain circumstances, the introduction of certain "inconveniences" to serve as safeguards for the whole people is desirable.

THE REFORM OF THE SMALL PENSIONS FOR PARTIAL DISABILITY.

The minute gradation of pensions in cases of partial disability formed one of the greatest difficulties at the time of the introduction of workingmen's insurance. The scale ran from 5% to 100%, and complicated lists were worked out for the purpose of reckoning the pensions for partial disability in percentages of the pensions for total disability. In order to observe the letter of the law, it was endeavored to measure every injury no matter how trivial in terms of money. Unimportant finger hurts, which were hardly of any moment, were compensated with an indemnity of 5%. Soon the workingmen realized the fact that it was very easy to obtain such small pensions. For simulation, exaggeration and the "conservation" of petty instances of stiffness in the joints was not difficult. In consequence of this, these small pensions, designated by the common people as drink money pensions, became very quickly widespread. And nothing has contributed so much to the development of the pension mania as this insignificant beginning.

For this reason the Imperial Insurance Office decided to interpose a barrier to such practices by declaring in a decision rendered on October 5th, 1901: "As a rule pensions of less than 10% are not to be granted, because experience shows that the degrees of disability taxable at less than 10% are not regarded as a measurable loss in industrial life."(3)

In medical circles, the attitude was taken that this limitation would not suffice. Sachs, for example, believed that any loss in working capacity of less than 25% ought not to be compensated. In other quarters also the demand was made for the abolishment of pensions for disabilities of less than 25% or 20%.

(1) Abgeordneter Hoch declared on March 21st, 1912, in the Reichstag: "We have even conceded that the costs of the medical report (furnished by the physician named by the workman) may be imposed on the workman if the court is of the opinion that the report is unnecessary."

(2) See §1596, cf. also §1681.

(3) See p. 226 of Breithaupt's collection, cited elsewhere.

And in §1670: "At the hearing it is to be officially inquired into whether and to what extent the losing party is to reimburse the other side for its costs."

In its draft of an Imperial Insurance Code, the government made another proposition. The small pensions for partial disability were to remain in existence, but were to be placed in a category by themselves through the provision that it should be permissible to grant pensions which amounted to 20% or less, for a fixed period only. This time limitation of the pension grant was not to be appealable.(1)

Thereby the government desired to bring it about that workingmen who had received unimportant injuries should exert themselves to overcome the difficulty by accommodation and adaptation. It was desired to exert some sort of pressure, which could not possibly be regarded as a hardship, inasmuch as it referred only to disability cases of less than 25%. Nevertheless, the proposition aroused dissatisfaction in workingmen's circles. The leading parties in the Reichstag not only rejected it, but took the opportunity to criticise the Imperial Insurance Office sharply for endeavoring, through its judicial bodies, to do away with the small pensions. Here again also electoral campaign exigencies stand in the way of granting demands required by circumstances.

The Question of Lump Sum Payments.

For years past the question has been agitated whether the attendant evils of accident insurance legislation could not be done away with if in certain cases use were made of a single lump sum payment in place of a pension. From the outset, it was clearly foreseen that a system of lump sum payments contained certain dangers inasmuch as a part of the workingmen would not be competent to make a proper use of a money payment and would ultimately become dependent on poor relief. This drawback exists beyond all question; but to mention it by no means settles the question whether a system of lump sum payments is to be recommended or not. For if the least worthy of the population is perhaps unfavorably affected thereby, the great mass of average workers, on the other hand, would be prevented from falling victims to chronic disease. And this is the most important circumstance of all to consider.

As a matter of fact, a series of observations have been made according to which it would seem desirable to make use of a system of lump sum payments. In 1907, the meeting of the South-West German Neurologists and Alienists was devoted to this question. A general inquiry resulted in showing "that all physicians who had any available data on the subject, and who compared the course of traumatic neuroses where the pension and the lump sum payment systems prevailed, were convinced of the greater efficacy of the latter method." Without doubt, there are many cases where the course of the disease is not at all affected by the kind of compensation paid. But as the chairman of the meeting declared, the number of cases of traumatic neu-

(1) §654 des Entwurfs einer Reichsversicherungsordnung.

sis favorably influenced by lump sum payments is more than half of all, of which a great part recovered their former full working capacity. Compared to the usually poor showing made in these cases under the present system of pension payments, this is truly a brilliant outcome.

The explanation of this is to be found in the fact that a lump sum payment does away with the nervous strain brought on by the litigation for a pension. For a lump sum payment results in a final determination, whereas an accident pension is invariably granted "subject to revision."(1) While the one pensioned is continually under observation, after the making of a lump sum payment the workman enjoys entire freedom of movement. He is able to consider himself again as a well man, is again able to compete and acquires thereby, as well as through his having been placed in a stronger financial position, the possibility of again making his way upwards.

After the encouraging preliminary labors of the South-West German meeting, the 2nd International Congress for Accident Surgery (1909) made the subject one of the topics to be discussed. Thus an international discussion was started in which the experience of Switzerland and Denmark were cited with particular effect.

In Switzerland, lump sum payments were customarily made in cases where nervous troubles developed from accident. The new Federal statute has expressly dealt with this condition of affairs in Article 82: "If a marked improvement in the health of the insured is not to be anticipated from a continuation of the medical treatment, while the assumption be yet justified that the insured, after his claim for compensation has been determined and after he has resumed his work, will attain his former working capacity, the indemnities theretofore paid are to cease and the insured is to receive a lump sum payment instead of a pension. The amount of the lump sum payment is equal to the cash value of a stationary or gradually falling pension for three years at the outside: this pension is determined—at the time the lump sum payment is measured—on the basis of the yearly salary previously earned by the insured and according to his state of health and according to the degree of his disability."

The results of investigations are at hand concerning the success of lump sum payments in Switzerland. With these as a basis, Naegeli(2) came to the conclusion that the settlement of accidents through lump sum payments was to be regarded as nothing more or less than causal therapeutics, "If even frequently a conscious exaggeration played some part, nevertheless through the final determination of all legal claims the factor is removed

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(1) Even the "permanent pension," mentioned in the Reichsversicherungsordnung (§609) is granted "subject to revision." It can be determined anew, at intervals of at least a year.

(2) Korrespondenzblatt für Schweizer Aerztl. for 1910, No. 2.

which before prevented the people from getting well." Later, Naegeli writes to Laquer:(1) "I believe I am able to assure you that, in Switzerland, accident neuroses are generally settled with lump sum payments and are cured by them . . . In Switzerland, there are no unhealed neuroses two years after lump sum payments are made—at least during the continuation of my researches I was not able to find a single case anywhere."

Still more interesting is Denmark's experience, because lump sum payments have been used there since the introduction of the accident insurance law of 1898, and because the workmen's insurance board possesses broad powers of adapting this system to all requirements. In Denmark the conclusion has been reached that lump sum payments are most efficacious if made in two installments. Wimmer explains this in the following words:(2) "As soon as the injured man is known to be suffering from a traumatic neurosis, he is granted a provisional indemnity—based on the then existing circumstances—of 1,000 marks on the average. 51.9% of all cases are healed by means of this lump sum payment. From one to two years later, if, by special examinations and evidence of the actual working capacity of the injured, a greater degree of invalidity than was originally assumed, is proved to exist, the remaining cases receive a further final lump sum averaging 1,300 marks." According to Wimmer's assertions, 93.6% of all cases were cured in this way.

Up to this time, German workmen's insurance has made but little use of lump sum settlements. The Accident Insurance Law of 1884 spoke of lump sum payments for foreign workmen only. Not until the supplementary law of 1900 was the workingman given the right to ask for a lump sum payment in cases where a pension of 15% or less was awarded him. The main requisite for the granting of a lump sum payment was, therefore, the action of the workman himself, and this action was besides carefully safeguarded.(3) More particularly the workman was given the right to withdraw his motion, even in the appeal court. Therefore, he could afford to wait and see from the course of the negotia-

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(1) Laquer: Die Heilbarkeit nervöser Unfallfolgen, at p. 19.

(2) Wimmer (Copenhagen): Die Prognose der traumatischen Hysterie und ihre Beeinflussung durch die Kapitalabfindung. Zentralbl. f. Nervenheilk. u. Psych. for 1910, at p. 117.

(3) §95 of the Gewerbeunfallversicherungsgesetzes: "If a pension of 15% or less is awarded in cases of partial disability, the employers' association may award the party entitled to compensation a lump sum payment upon his moving therefor and after the minor administration officials have been heard. Before his demand is granted, it must be made clear to the injured party that, even if his condition should become very much worse, he will have no further right to a pension once the lump sum payment has been made. An appeal is permissible from the decree determining the lump sum payment. In such a case, the taking of an appeal has the effect of arresting the judgment. Until the decision in the appeal proceedings is announced, the workingman's motion can be withdrawn."

tions whether he could hope for a large lump sum payment. For his greater protection, he could make his motion "conditional" or add a "conditional" withdrawal: "I withdraw my motion unless a lump sum payment of 2,000 marks is awarded me."

This allowance of lump sum payments in the place of pensions for small disabilities—which is surrounded with so many safeguards—had the result of increasing the number of lawsuits still more. Made secure by the conditional withdrawal, the workmen are able to haggle concerning the amount of the lump sum payments.(1) The government, therefore, tried to make the system of lump sum payments effective by proposing in its draft of an Imperial Insurance Code that pensions of 20% or less should be settled by lump sum payments if the employers' association in conjunction with the Imperial Insurance Office should agree thereto. In accordance with the experience gathered abroad, the allowance of lump sum settlements was not to be made dependent on the workingman making a special motion therefor, as it was believed that the consent of the Insurance Office and the decision of the court of first resort (Oberversicherungsamt) fully sufficed to guard against abuses. Nevertheless, the majority of the Reichstag was of a different opinion and inserted as a third requisite "the consent" of the workman.

Lump sum payments, therefore, play only an unimportant role in German workingmen's insurance. The results of party struggles can be observed also in the way this question has been treated; but here there are also at work tendencies whose favorable development may be looked forward to with hope.

Conclusion.

Whoever has carefully observed the tendencies which have revealed themselves in the movement for reform, cannot help noticing that—besides the conflicting interests of workmen and employers—there are two great tendencies working in opposite directions.

On the one hand, there is the endeavor to procure greater benefits for the workingmen, and not only to raise the amounts of the pensions, but also to make easier the attainment of a pension. As I have already explained, electoral campaign motives play a great part therein. Nevertheless, I am far from asserting that such motives solely are controlling. With many, rather, the

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(1) Concerning this haggling, the Imperial Insurance Office rendered the following decision on May 25th, 1908: The declaration of the workman before the arbitration court that he withdraws his motion for a lump sum payment unless a payment of ——— marks is awarded him is permissible. Permissible also is the conditional motion: ("I move for a lump sum payment on condition that ——— marks are awarded me.") The declaration of the workman in the appeal court that he would now be satisfied with a smaller sum is deemed a new lump sum settlement offer in regard to which the employers' association must decide anew by filing a decree.

desire to increase the amount of the insurance pensions and to make their attainment easier is due to the conviction that it is in the interest of the whole population to insure the working strength and to increase the consuming power of the broad masses of the people.

On the other hand, the opinion is gaining ground that we are in reality arriving at the opposite of what was intended. For workingmen's insurance legislation is showing undesirable moral and hygienic results, which were originally regarded as a necessary evil but which are gradually making the blessings of workingmen's insurance appear very questionable. The material to prove the correctness of this proposition is growing incessantly. The most prominent physicians are warning against the threatened consequences; and no one has the right to designate these physicians as "anti-social" who have had the courage to give utterance to opinions displeasing to the toiling masses.

PART THREE.

THE MISUSE OF SOCIAL-POLITY INSTITUTIONS IN PARTY POLITICS.

INTRODUCTION.

As promulgators of a better era appeared such men as Abbe and Freese, who sought to soften the hardships of the labor conflict by making use of the workingmen themselves in the management of their business. Within the limits of their narrow circle, they originated "the constitutional industrial system;" and the idea that state social legislation should aid in widening this circle is a very enticing one. Community of work combined with community of interests would alleviate or do away with some of the differences brought on by class conflicts.

The official leaders in our social legislation are aware of this possibility, and have often referred thereto when the law making branch created offices and administrative boards in which the workingmen were to take part. Indeed, the government let it be known that they regarded this branch of social legislation as one of the most important. Thus the Prussian Minister of Commerce, on February 16th, 1909, stated in the Abgeordnetenhaus: "If you recall to mind what the course of our social legislation has been during the past twenty years, you will find that no country has been so bent as Germany on raising and improving by legal measures of all kinds the material condition of the workingman, his social position and his position in industry. But, gentlemen, we have failed, nevertheless, to attain by these measures one of the things which we wished to attain, namely, an improvement in the relations between master and workmen." This object could only be attained if the workingmen were permitted to participate in some branches of administration, if, for example, the accident prevention service in mines (safety men) were confided to the workers. This is what the government demanded; and the minister supported the proposition in these words: "If you pass the law in the form in which it is to be submitted, you will create a social-polity work of importance, you will be doing something which will enable us to find our way again to the hearts of a great part of our German people. That is the reason why I ask you to accept the proposition." And in the course of the debate he repeated again: "I am of the assured conviction that we hereby shall reach the way along which the effort to win the heart and soul of the workman will not be entirely fruitless." In this manner, the Institute of Safety Men was created, which affords the workingmen opportunity of per-

manently participating in the task of protecting their lives and health. The sickness societies were previously organized in the same manner, the miners' societies, the workingmen's boards and other institutions. Common work united to common interests and free from all political entanglements!

CHAPTER I.

THE ELECTORAL CAMPAIGN.

Common work united to common interests free from all political entanglements!

Of course, it was easy to foresee that great difficulties stood in the way of the realization of these hopes. It was to be assumed that the workingmen would fall back on their organizations and on their trade unions when the time came to prepare for the elections to the sickness and miners' societies, etc., and as the German workingmen's organizations are of a pronouncedly political character, it was to be expected that the trade unions would seek to obtain political advantages out of the opportunity offered them. But it was believed that these difficulties could be overcome by making the workmen participate in sober administrative work and conferences concerning mutual interests, and thereby drawing them away from the socialistic agitators with their rosy promises for the future. It was hoped also that the workingmen would soon come to recognize how necessary it is for assuring their own successful business management to guard the social-polity administrative bodies against the stormy vicissitudes of party politics.

There is one defect in this line of reasoning which has come to be authoritative in many branches of German social legislation: It does not take into account the peculiar party relations to be found in the German Empire. In Germany the workmen are not divided—as in the case of most other industrial countries—into workingmen's parties which only differ from each other in their degree of radicalism; but the political organization of the German industrial laborers is rendered complex by differences of religion and of nationality. This separation is most pronounced in the principal industrial regions—Rheinland-Westphalia and Upper Silesia—and completely controls the political situation. Thus in the Regierungsbezirk Dusseldorf with its wealth of industries, the Social Democrats and Poles with 36.3% of all votes cast are opposed to and are of practically the same strength as the Centre party,(1) which has 35.8% of all votes cast. In the Regierungsbezirk Arnsberg, which includes the industrial centres of Dortmund, Bochum, Gelsenkirchen, Siegen, Hamm,

(1) On this point and as to what follows, consult the Statistik der Reichstagswahlen, published by the "Kaiserliches Statistiches Amt."

Iserlohn, Hagen, Altona, etc., 33.9% of all votes were case for the Social Democrats, 24.5% for the Centre party and 3.9% for the Poles. In the Regierungsbezirk Oppeln, which includes the Upper Silesian industrial region, the Poles received 30.8% of all votes, the Centre 36.8% and the Social Democrats 14%.

And the intensity of the conflict with its varying results can be judged even from the sober tables of figures given in the election statistics. For from one Reichstag election to another the figures vary, so that first the Social Democrats and then again the Centre party has the majority.

In order to be properly prepared for the struggle, the three parties have created a secure foundation for themselves in the workingmen's trade unions. It is well known that this "economic ground-work" idea was only carried out by the Social Democratic and Centre parties after a bitter contest. But today there is no longer any doubt that the "free unions," which number 2½ million members, are the most important part of the Social Democratic organization. And if, as some Roman fathers desire, the Centre Party should renounce the Christian unions (with about 350,000 members), then the strength of the Centre Party in the principal industrial regions would be a thing of the past.

Since the parties are opposed to each other in such bitter conflict and are so thoroughly dependent on the laborers' organizations, it is not surprising that the leaders make use of every means to strengthen the power of their respective parties. Very early it became apparent that the social-polity institutions formed excellent instrumentalities for that purpose.

The Social Democrats were the first to exploit this new possibility. The Centre Party, however, make no bones about the fact that it then followed suit: "Only in course of time and—after the Christian Workman's movement had gained in strength and we had said to our supporters: Don't let yourselves be treated as of no account, in allowing yourselves to be always pushed to one side and to be deemed unworthy to be a member of the managing committee of a local sickness society—only then did we adopt the same prescription as they (the Social Democrats). We had to adopt it in order that the Christian workmen should not be completely forced out of the sickness societies."(1) Quite right! from the Centre.

The same motives came into play in the elections for the miners' societies, for safety men, for workmen's committees, etc. Thus in an appeal of the Bochumer Volksblatt it is stated that "the elections for the miners' societies for the region of the Ruhr are merely the preliminary for the next Reichstag election and the regularly planned assemblage for all exploiters and those opposed to workingmen's interests."

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(1) Remarks of the Centre Abgeordneter Becker-Arnsberg in the Reichstag on May 11th, 1911.

After the elections, which had been conducted with every possible resort to party politics, were over, the Bergarbeiterzeitung wrote:

"With us the People!
"With us Victory!
"The Result of the Election:

"In the general election held on Saturday, September 17th, 1910, for elderships in the Society of Miners of the Ruhr, out of a total of 419 districts there were secured by the

"Mine Workers Union	299
"Trade Union and Miners Hotch-Potch.	83
"Polish Professional Union	29
"Miners party alone	7

"Up to the present time, we have not been informed regarding the outcome of the electoral contests in the missing districts. As representatives from 419 districts must have been elected, 210 of which constitute an absolute majority, the Mine Workers Union has therefore 89 seats more in the college of elders than are necessary for an absolute majority!

"According to the statement of the West German Arbeiter Zeitung of August 20th, 1910, previous to the election, the Mine Workers Union possessed 235, the Miners Trade Union of the Centre Party about 130.

"According to this, therefore, the Mine Workers Union gained 64 districts on last Saturday and the Trade Union lost 41. In the general election for elders held on September 10th, 1904, the Mine Workers Union secured 174, the Trade Union acting then as now in connection with the mining interests, 111 districts. The Mine Workers Union has thus secured 125 districts more, and the Trade Union 28 districts less than in 1904.

"To foot, to horse and to wagon
"The Lord has routed them!

"This was a fight! Such a contest for the office of elder has never occurred before. Things were pretty hot in 1904, but this has put in the shade everything that has heretofore occurred."

The same tone is assumed in elections for safety men: "The Ruhr basin to the Mine Workers Union! (that is, the so-called Old Union which belong to the Social Democratic Party). As in the case of all miners' elections, in the elections for safety men much the larger majority of those elected must consist of members of the union."(1)

And when this election also resulted in a victory for the Social

(1) Bergarbeiterzeitung of June 18th, 1910.

Democrats, the jubilant announcement could be made: In the lower Rhenish-Westphalian industrial district, the working miners, consisting of almost 350,000 men, had elected 1,552 safety men, of which 1,055 belonged to the "Old Union" and only 304 to the Trade Union of Christian Workmen.

Nevertheless, all such examples fail to give any adequate idea of the fever heat developed by the electoral contests as soon as the time for the "social elections" approaches. The working population, which was quietly attending to its business, is suddenly aroused by agitators in the bluntest way. The workmen, who believed in this instance that they ought to select respectable, trustworthy representatves for the social insurance administration boards, learn that "much more is at stake," that "the political future" is involved and also a "fight against capitalistic exploitation." A few days before election time, the workingmen's meetings are apt to be so jammed that no hall suffices. At the same time, the electoral campaign takes on a form which for virulence of language far exceeds the worst expressions used in political contests. Thus, for example, a circular with the following contents made its appearance shortly before the miners' elections:

"Attention! Trade Union Members! Attention!

"August Brust, the chairman of our Trade Union, received on Tuesday, the 6th inst., from the mine owners the sum of 30,000 marks for his own personal use as a reward for his trouble in fighting the oppositional elder and the old Mine Workers Union.

"We members of the Union protested most vigorously against this betrayal of labor on the part of our chairman Brust and implored him to resign his office at once in order to save our Union from destruction.

"Our Union certainly was not created for the purpose of aiding the mine owners and of helping Brust to become a wealthy man. Brust has betrayed us poor members for 30,000 marks and has become a Judas, the betrayer of our Union.

"A member of the Managing Committee of the Christ. Trade Union."

The consequence of this untrue report was a brilliant victory of the Social Democratic candidate. In the hearing before the court, however, it was proven that the circular was concocted by an employee of the Social Democratic Union and was published n the printing office of a Social Democratic Paper appearing in Cologne. It was further judicially determined that the chairman of the Social Democratic Union was informed as to the circular already before the election and yet "had not looked out for the public's enlightenment as the occasion called for." (Judgment of the criminal court of Essen, November 19th, 1909.)

After the pattern set in Rhenish-Westphalian election contests, similar conditions developed in Upper Silesia. There the fight

for control of the social-polity institutions is one of the chief means of strengthening the position of the Polish Workingmen's Party. Conditions in Saxony are hardly less acute. As to these, the Dresdener Volkszeitung says:

> "The election for the local sickness society has shown again that the Dresden organized labor element was to be relied upon and that the fruit of those following tortuous ways and of the we-are-also-workingmen's organizations does not flourish here. In trade union matters the Dresden labor population seeks to be represented only by the free labor unions, and, in political matters, only by the Social Democratic Party. It shows this also in all elections of a social-polity nature."(1)

How far astray from actual realities was the assumption that the participation in elections in social-polity institutions would serve as a means of conciliation—because every workman would be interested in having as competent, business-like and impartial men as possible in the various administration branches—and the hope that desire for good business management would lessen political differences! In reality the "social" electoral campaign suffices of itself to keep the workmen constantly excited and to make them constantly more subject to the influence of political agitation.

CHAPTER II.

PARTY RULE.

Unless after the close of an election campaign some new means could be found for keeping party politics alive, even the most furious election contest could not permanently endanger the purpose of social institutions. The legislature has therefore carefully sought to prevent all political exploitation of social legislation administrative bodies. The various positions filled by the workingmen are always carefully surrounded by safeguards. Nevertheless, actual experience has shown that almost always ways and means have been found for party politics to creep in.

It is well known that the government demanded a participation by the workingmen in the administration of social institutions principally because "a defection of our workmen from the Social Democratic Party was looked forward to."(2)

The assertion of the employers that in reality just the opposite would occur because the chosen representatives of the workingmen would be selected entirely according to their political beliefs and in order to spread the doctrines of their party—this asser-

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(1) Compare the Reichstag session of May 11th, 1911.
(2) Expression of the Prussian Minister of Commerce in the Abgeordnetenhaus on November 29th, 1910.

tion could not be expected to have much weight given it as it expressed merely the opinion of interested parties. It is therefore all the more interesting to observe what the state officials themselves now say. On October 25th, 1910, the Prussian Minister of Commerce declared that "the best planned measures in their operations run the risk of being turned into the opposite of what are intended" because in the elections for social institutions "not above all else the attainments and the experience of the one selected, but rather the degree of his political radicalism is determinative." And the reports of the state Revierbehorden confirm this assertion in every respect.(1)

The persons thus chosen "according to the degree of their political radicalism" are entrusted by law with certain kinds of inspection work. This creates a situation of affairs which is extremely favorable for the victorious party. In the labor press, there is a stock heading, which is never out of date, reporting how the victorious Social Democratic inspectors proceed gently against members of their own organization while on the other hand they annoy those belonging either to "no organization" or to a "false organization" by a system of repeated checking until they become members of the Social Democratic organization. Indeed, as has been judicially determined,(2) agitation on behalf of the party is openly carried on. Thus, for example, the morning before an election for a substitute, a safety man posted the following announcement on the bulletin board reserved for official communications:

"Announcement

of the pay station.....To.....
the.....190 in.....

"Attention! District VIII. Attention!

"The Mine Workers' Union (the so-called "old" Social Democratic union) presents to you as candidate for the office of safety man, the election for which is to take place tomorrow, September 29th, Miner Josef Friemel. As a matter of honor, every comrade should see to it that he is unanimously elected. If Grünert, who allowed himself to be nominated as a rival candidate at the last election, should attempt the same thing again, reject his candidacy most decisively because as a non-unionist he cannot be considered by us any more, but

(1) Thus one reads in the annual report for 1911 of the Royal Prussian Government and Industrial Privy Councillors and Mining Officials, at p. 633:

"By the end of August, when from 60 to 70 per cent. of the elections for these positions had been held under very active participation, it was revealed that frequently not personal efficiency and professional experience were what turned the scales, but rather that adherence to a certain organization and political belief played a more important part in the election."

(2) Decision of the Berggewerbegericht Dortmund Spruchkammer for South Essen on November 29th, 1910.

must present himself as a candidate of the mining interests. Our candidate, Josef Friemel, was unanimously selected, and therefore comrades can vote for him without any hesitation. And now, comrades, show that you are not to be led astray a second time and that you do not intend to lag behind the other districts.

"Good wishes hereto!

"(Signature.)"

Through a petition(1) which, on February 1st, 1912, the Social Democratic Mine Workers Union addressed to the Abgeordnetenhaus, it is to be seen that not merely a single, unimportant instance is here involved. In this document, the Union expressly refers to this case and advocates as a right that a safety man "aside from his duties as safety man should take an active part in the campaign for the election of a safety man." Indeed, the Union demanded even a change in the law so that workmen inspectors could not be dismissed on account of such practices.

Of still more importance for the party leaders is the possibility of obtaining—through making use of the social institutions—of a mass of material which serves as a basis for further demand and as a means of preparing for future labor conflicts. Thus, for example, when the elections for safety men had resulted in the complete victory of the Social Democratic union and when over 1,000 members of this organization led the miners as elected representatives, the Social Democratic union promptly availed itself of the favorable opportunity offered in the following manner: The law prescribes that the mine management must provide a special "mining journal" for each safety man in which he is to enter his observations. Before long the Social Democratic union distributed a second "mining journal" to the safety men belonging to its organization and issued the following instructions in regard thereto:

"In this (2nd Journal) the same entries have to be made as in the one at the mine. The comments of the manager or of the accompanying official have to be likewise copied. An opportunity for copying is offered at the time of the next change of shift. Any prohibition of such copying is of no effect because the entries are to be made in one's own hand and it is nobody's business how the safety man acts or what he does when he writes in the mining journal. He can forbid any overseeing or tutelage.

"It is further recommended to enter in the book furnished by the union any important observations made regarding conditions in the district, which one is not

(1) Petition of the managing committee of the German Mine Workers Union, and, as belonging to this Union, of the mine eldership of the General Mine Union Bochum, for a change in the general mining law.

permitted to enter in the book at the mine. These observations, however, are to be so marked that one can see that they are not contained in the journal book at the mine. Before these observations, one should write heavily underlined and in parenthesis: '(entered only in this book.)'"

The Union further demanded that its safety men should note the names of the mine shift and other particulars, and remarked as to this: "Note books will be furnished by the Union."(1)

Without further explanation being required, it is evident that in this way voluminous material is gathered among the documents of the party leaders. And, although the organizations endeavor to keep up outward appearances, proof is at hand to show that the party leaders are especially striving for material to serve campaign purposes. In order to comprehend these efforts, one should read the following sentences which I have taken from the list of instructions of the old union;

> "The (legal) ordinances concerning safety men contain a provision which has the object of entirely eliminating the question of wages from the scope of the safety man's activities. . . . Nevertheless, the word wages is often to be heard at the time of the shift changes, but only in the mouths of the laborers. As a matter of principle, the safety man is never allowed to inquire as to the amount of wages. On a complaint as to a bad bargain having been made, he must answer: Comrades, I am forbidden to give the answers which I would like to make."

And one should compare herewith the following circular, which the same union that gave this cautious advice addressed to the safety men of its organization and which fell into unfriendly hands through an accident:(2)

"German Mine Workers Union.

"Esteemed Comrade!

> "As we have now to bring proof in our movement for higher wages through use of suitable and right at hand material to what extent low starvation wages are still being paid in the present period of high prices, you are to help, in so far as it lies in your power, to-

(1) These instructions are contained in a book which bears the following title: What are the duties of safety men? Published by the managing committee of the Mine Workers Union, 1910. Press of E. Haussmann & Co. in Bochum. It appears that this book, of which every safety man of the Social Democratic Union received a copy, was distributed "with every avoidance of publicity." At least, I only succeeded in obtaining a copy indirectly, and the owner of it (a safety man of the old union) demanded that I send it back by return mail as he "was afraid of being checked up by the old union."

(2) The original circular was shown me. It is also printed in the annual report of the mine owners' union for 1911 at p. 43.

wards this end in order that we may receive suitable information concerning low-priced wages which have been paid.

"You are to write down, therefore, on the enclosed interrogation blank, all low miners' wages within the limits of your inspection district which have come either to your notice or to that of a comrade known to you. As we have learned by experience, it is difficult enough in itself to obtain general statistics of wages and, in view of the short and pressing need of time, absolutely impossible of accomplishment.

"For this reason, in order to refute the outcry of the mine operators over the high miners' wages, we wish to bring about at least an instructive tabulation of low miners' wages up to five marks. As the shift-wages are very much the same in the various mines, only an answer is required to the questions herewith submitted.

"This statistic has to be completed without fail between now and the next pay-day. You may therefore now notify all comrades receiving low wages that they are to retain their wage books at the next wage-day and to hand them over to you so that their wages can be copied, whereafter the wage book can be returned to its owner.

"The enclosed sheet must be returned to me correctly filled out by December 5th next at the very latest. Monthly headings for a whole quarter of a year have been provided for. If, however, the wages for all three months cannot be supplied—whether on account of a change in position or otherwise—the report for the last month and for the month previous thereto will suffice.

"This circular is enclosed to every safety man as well as a sheet to be filled out which will be handed each one individually by the overseer. The sheet with question is also to be returned to the latter, whereupon for the purpose of saving postage he must deliver the same at my address.

"Warmest Greetings!

"The District Leadership.

"(Signature.)"

These instructions need no commentary, because everyone knows without further explanation how through the control of social-polity institutions the posting, recruiting and leadership of the masses is made easier for political party agitators.

"Common work united to common interests!" What has one not hoped for from this magic formula? When about thirty years ago the organization of the sickness societies was brought we thought we already saw light ahead and how the workingmen would wisely and impartially devote themselves to "ad-

ministrative affairs." Indeed, it was even assumed as a matter of course that the employers, although condemned to be in minority, would be able to secure for themselves "through the weightiness of their reasons" a sufficiently effective influence in the administration of social institutions even in the face of a majority constituted by the workingmen.

How much "psychological wisdom" was expended in defending this hopeful belief! How indefatigably did one explain the contrary facts away as "temporary symptoms" and "children's diseases!" And yet the experience of the last decades clearly proves that the psychology of social-polity institutions is much simpler than was supposed. For every labor leader knows that through the control of social institutions three important political ends can be attained. First: an exact, thorough survey of conditions combined with the collection of material that can "be put to use." Secondly: the carrying out of a more thorough system of party recruiting. Thirdly: the provision for members who have worked for the party of positions of influence or with pay.

In a country where several mighty parties are fighting with the greatest possible energy for labor votes, the labor leaders could not allow such possibilities to escape them! Therefore the beautiful idea of "common work united to common interests" had to fade away.

NOTE TO THE CHAPTER ON "PARTY RULE."

In this chapter, I have intentionally not referred in detail to those social-polity institutions in which party rule makes the most unpleasant impression, namely, the local sickness societies. To give a detailed account of the abuses which have been developed among them appears to me to be superfluous, because the public has been sufficiently informed in the recent debate on the Imperial Insurance Code as to how the local sickness societies have been misused in order to provide positions with salaries for deserving party agitators and in order to insure them a life tenure in their positions by peculiar contracts of employment (I refer to the so-called Düsseldorf contracts).

At this point, I would like to refer to a book which created quite a sensation during the consideration of the Imperial Insurance Code: Dr. Möller, Die Herrschaft der Sozial-Demokratie in der deutschen Krankenversicherung, Berlin, 1910. Möller sought to prove, by making use of very comprehensive material, that the local sickness societies were controlled and misused by the Social Democratic Party. The book had a peculiar history. Several weeks after its first appearance, J. Frässdorf, in the name of the "Central Union of the Local Sickness Societies in the German Empire," asked all of the directorates of societies which had been attacked to bring an action against the author and to prove in court that Möller's assertions were untrue. (This

public summons appeared on January 11th, 1911, in the Deutsche Krankenkassen-Zeitung.) At the same time, Frässdorf announced that the Dresden local sickness society, which he himself conducted, would proceed legally against Möller. Furthermore, the Social Democratic representative Hoch declared on May 2nd, 1911, in the Reichstag: "The inaccuracy of this bungling piece of work is easy to demonstrate"; and he held out the prospect of the judicial proceedings leading to the complete demolition of Möller's book. All this occurred, while a change in the law affecting the local sickness societies was being discussed in the Reichstag.

Under these circumstances many deemed it to be prudent to speak of this book with reservation, and the opinion arose that Möller's statements were biased and of doubtful reliability, an opinion which is still generally prevalent today. Nevertheless, it did not appear quite right to me to pass judgment on the book based on the "prevailing opinion." I, therefore, made inquiries concerning the outcome of the advertised lawsuits against Möller's book. I arrived at the following interesting result:

Since Möller in his book criticises more than a hundred of the great local sickness societies and accuses almost all of them of "terrorism," "favoritism," etc., as well as reciting some very unpleasant facts, and since J. Frässdorf, the head of the entire organization, had openly asked that Möller be judicially pursued and had especially notified the directorates of all sickness societies which had been slightingly referred to in the book, it was to be assumed that a mass of litigation would result. Nevertheless, only three suits in all were brought against Möller, among which was a suit brought by the directorate of the Dresden local sickness society, of which Frässdorf was a member and chairman.

Of these three suits, two ended in a compromise in which Möller conceded having made two mistakes, while his opponents in both cases acknowledged in writing that Möller had acted in good faith and that he was obliged to regard his information as reliable.

The third suit, which was that of the directorate of the Dresden sickness society, of which Frässdorf was the chairman, had the following curious career. Although Frässdorf acted under the advice of a lawyer, the complaint was filed in a court which lacked jurisdiction (the Munich Amtsgericht). The Amtsgericht in Munich promptly referred the complaint to the proper Amtsgericht at Ebersberg. The Ebersberg Amtsgericht thereupon threw out the complaint with costs for purely formal reasons. This was on August 19th, 1911. The complainant allowed the 14-day period to pass by without taking an appeal from the decision of the Ebersberg Amtsgericht. Several months passed by without the complainant's handing in a new complaint in proper form. Thus the matter remained unsettled during the period in which the Imperial Insurance Code was being con-

sidered in the Reichstag. When the time for the elections to the Reichstag approached, the complaint was filed on December 29th, 1911, with the court of competent jurisdiction, but withdrawn again in February, 1912, as soon as the elections and second ballots were over.

While these events in themselves are very interesting, the decisive facts are yet to be found in the following: I have already mentioned that, in spite of the public call therefor, only three complaints were filed against Möller's book. After Möller had waited in vain for the promised complaints on the part of the sickness society directorates disparaged by him, he determined to turn the tables and to formally accuse eleven Social Democratic editors who had criticised his book. Of these complaints, two were rejected for formal reasons (expiration of the Statute of Limitations). One complaint was settled through the editor retracting his statements with an expression of regret. The remaining eight complaints all ended in the editors being find up to 400 marks, besides being condemned to pay all costs and being also compelled to publish the judgment several times. Furthermore, Möller was able to file a complaint against the directorate of a local sickness society, which likewise led to a conviction being obtained. Thus ended the "judicial demolition" of Dr. Möller's book, which had been announced with such a flare of trumpets.

From a sense of literary duty I felt obliged to establish these facts; and I can recommend to everyone to read this book, which has become so noteworthy on account of its history.

CONCLUSION.

THE LIMITS OF SOCIAL LEGISLATION.

There is no greater sin than despair, for it leads to desperation.

Whoever has observed the undesirable effects of German social legislation and is not afraid to follow the path which leads past strife, hypocrisy and despair, will ultimately find some compensation in one certainty which stands out above the noise of party conflicts. The conviction is always becoming more pronounced that the undesirable results of social insurance legislation are fulfilling a historical mission since they will bring about a transformation of social insurance legislation. Even today it will not be easy to regard this transformation impartially, for political interests and passions surround everything with which social legislation is concerned. Nevertheless, the present situation of affairs requires that an attempt be made to draw some conclusions from the facts recited irrespective of whether the results coincide with political aspirations or not.

Today nobody will any longer venture to assert that social insurance legislation is simply "an idea of the period," which has taken hold of the minds with suggestive force and which will lose its magical effect with the next generation. Everybody realizes that it was one of the principal tasks of the last half-century to incorporate the laboring masses into our body politic, and that the task of today is to give the institution thus created permanency and stability. Not a passing idea of the period is involved, but an elementary political occurrence.

But one cannot overlook the fact that this elementary and weighty occurrence is accompanied and aided by some suggestive forces. Every period of transition is illumined with hopes and high expectations, because the best men of such a period, equipped with the knowledge of a previous age, are striving to bring about a new and ideal condition of affairs. And certainly only in such a period of heightened energy could the creation of German workingmen's insurance and workingmen's protective legislation have succeeded.

But upon this era of great and new creative work, a period of rest and of taking stock did not follow, as one might have supposed. On the contrary, there followed on the creation of the fundamental laws—which were passed in part contrary to the wishes of the working masses—a mass of new laws and a stream of new resolutions. Party rivalries,(1) therefore, brought about our present epoch, which one can designate in the domain of social legislation as the baroque period. An immeasurable production of constantly new regulations took place which fundamentally were nothing more than imitations, distortions and repetitions: A period which in reality is comparable to that art epoch of the baroque style which distorted the simple and noble lines of the renaissance era with "duplications" and arabesques.

Such a characterization applies both to the lack of limitations upon the demands for the practical enforcement of the laws and concerning their theoretical form, just as though the object were to bring about a transformation of the whole state with the help of the social-polity institutions.

We have observed the struggles which have made political events of social elections, and we have become acquainted with the methods by which the victorious party turns its power to account. Now that the trade unions have come to be the foundation of a political party, that party is now seeking to get control also of the social legislative positions and of the administrative bodies. In that way, a power is being developed whose deepest roots are protected by the social-polity laws themselves, a power which apparently will obtain the control in the future because, it looks for its support to the labor masses, that is, to the great mass of the voters.

(1) Cf. on this point chapter 2 and 3 of Part I, chapter 5 of Part II and Part III of this book.

But forces are being aroused against this apparently irresistible power, through whose progress the status of affairs is being changed. The laboring masses have split among themselves and have turned against each other just exactly in the field where party politics had most successfully forced their way into social politics.(1)

The struggle of workman against workman had this result that the Catholic labor leaders invoked the aid of the law against the rule of the Social-Democratic leaders—a risk in which they succeeded because they could fall back on the parliamentary might of the Centre Party. Thus they succeeded in putting through the idea that social-polity institutions had to be "neutralized," that is, freed from political party domination.(2)

"Neutralization" of social-polity institutions! The active agitation which the Social Democracy carried on as a result of this demand against the "labor secretary politics" of the Centre Party, clearly shows that the importance of this move has been clearly understood. For the present, the neutralization of a part of the social-polity institutions(3) is attempted by the use of two methods in the Imperial Insurance Code. First, by a very ancient practice, the *"itio in partes;"* for the Imperial Insurance Code requires that to the most important administrative questions "the employers' group" and "the insured group" must each give its separate assent.(4) The second measure, which is always to be resorted to, if the *itio in partes* has led to no result, is the interference of the government authorities.(5)

Nevertheless, this by no means exhausts the list of forces at work which are favorable to a further active intervention on the

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(1) See chapter 1, Part III, "The Electoral Contest."

(2) Compare the discussion in committee and in the committee of the whole on the Imperial Insurance Code.

(3) In sickness insurance, which forms the basis of workingmen's insurance.

(4) Thus, for example, §328 of the Imperial Insurance Code provides: "The members of the directorate of the local sickness society are to choose the chairman from among their number. The one who receives a majority, both in the employers' and in the workingmen's group in the directorate is elected." §345: "The resolutions for No. 6 and 7 require a majority both of the employers and of the insured." §349: "In the case of the sickness societies, appointments to positions which are paid for from the income of the society and of all officials who are under regular duties, are made by concurrent resolution of both groups in the directorate." §355: "Both in the directorate as well as in the executive committee, both the employers and the insured must decide separately regarding the assignment of duties."

(5) For example, §329: "If the election does not take place in the second sitting, the directorate must notify the Imperial Insurance Office. The latter names a substitute, who until the time of a valid election exercises all the rights and duties of a chairman at the expense of the sickness society." §350: "If no resolution as to appointments is adopted or if the approval is definitely refused, the Imperial Insurance Office names at the cost of the society and subject to its recall the persons needed to carry on the business," etc.

part of the state government. The elected representatives of the workingmen themselves help along this movement. Twelve years ago one of the best posted authorities(1) on our social legislation called attention to the fact that "among the officials (generally appointed by the Social Democratic party) of the local sickness societies, the desire had already made itself noticeable for some time past to obtain a more secure hold on their positions through being invested with the privileges and obligations of government officials." In the course of years, this movement has acquired more and more force and has led to the result that "the privileges and obligations of government or communal officials" can, as a matter of fact, be bestowed(2) on the officials entrusted with the business management of the large sickness societies, with the result that these officials are placed under the provisions of the disciplinary law.

But the tendencies which are favoring an increase in the scope of governmental administration are further aided by the contest in varied forms between social-polity institutions. For example, a bitter feud has been raging for many years between the factory and the local sickness societies, which had led to the insertion in the Imperial Insurance Code of provisions looking forward to a "centralization" of sickness insurance. This will unavoidably result in increasing the power of the bureaucracy. Exactly similar conflicts, which led to quite similar consequences, arose out of the relations of the employers' associations to sickness insurance,(3) and also out of the "question of the physician," which is still unsettled, and out of the "coalition agreements," which have been entered into in the course of the struggle against the social insurance sickness societies. Each year brings with it new difficulties. Whichever way one turns, new differences are appearing which are paving the way for state administration, and it almost appears as though the course of events had created a *divide et impera* in favor of a system of administration by the state.

Without having sought these victories, state administration is therefore making headway,—but not without preparation having been made therefor. The course of events was already foreseen years ago by the heads of government administration, and, when in April, 1909, the draft of an Imperial Insurance Code was made public, it appeared that the government had asked for a new body of officials to help carry the burden of responsibility.

It is true that the government was not able fully to carry out its intentions in the Reichstag. It was not able to have the "in-

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(1) Geheimer Oberregierungsrat Dr. Hoffman, of the Prussian Ministry of Commerce, in an article which appeared in the Preussisches Verwaltungsblatt for 1900, in Nos. 29 and 31.

(2) §359 of the Reichsversicherungsordnung.

(3) Compare above: The Restorative Treatment During the Waiting Period.

surance offices" accepted in the exact form desired, but was obliged to be satisfied with "attenuated insurance offices." But there is no doubt but that the entire completion of this official organization is only a question of time. The more fiercely the masses of the people and the political parties demand the enactment of new social-polity measures and the greater the scope of social-polity institutions becomes, the sooner will we have to increase the powers of the new official organization. It is true that serious misgivings have arisen concerning the dreaded "bureaucratization of social politics." The industrial owners and the workingmen are united in this feeling of misgiving. But this especially shows the irresistible force of the march of events, which is accomplishing its ends although very few desire it.

As so much was anticipated from the self-administration of social institutions,(1) German social legislation will necessarily lose much of its popular charm as the scope of government administration becomes enlarged. We have been accustomed to call on the state only when it was necessary to control a private industrial owner and to regulate private enterprises.(2) Only in this way did the expression of "the needful interference on the part of the state" gain its attractiveness.

But only now when the system of government administration with all its strength and power is about to spread itself over the social-polity institutions are we beginning to understand. We realize how the room for high hopes and daring expectations is becoming narrowed, and feel how the effects predicted during the era of new creative efforts are fading away. Social policies grow old and lose the force exerted at the time of their first promulgation. Quite sober limits arise to the movement which once appeared limitless.

Whether good or evil results from this aging process depends entirely on what attitude the people and their leaders assume towards this development. Already voices are being heard which indicate a search for new fields of opportunity. Some of those who always advocated social-polity progress, recall "the tragedy of all great reform movements," which is to be found in the fact that the unintended effects ("the increasing regulation, overseeing and schematization of economic and social activity") exert a greater influence than the intended effects.(3)

An era in which this truth is come to be realized also among the masses, through "protective measures becoming changed into measures of subordination," such an era is ripe for a correct re-estimate of the importance of independence and personal ini-

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(1) See conclusion of last chapter in Part III.
(2) See Part I: State Regulation and Private Helplessness.
(3) Read, for example, the sessions of the 23d Evangelical-Social Congress, 1912, with the reports of Wiese and Rade.

tiative and especially for a revaluation of those creative performances in which no governmental power can compete with private organization.(1) Consequently, after a noble and fruitful era of social progress, we should make all that has been gained secure and procure a breathing space for a start on the way to new fields of effort.

(1) See above: Government Ownership of Private Enterprises.

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